THE PLACE OF COMPENSATION IN TEMPERANCE REFORM

C. P. SANGER

STUDIES IN ECONOMICS AND POLITICAL SCIENCE.
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CONTENTS.

Q. followed by a number refers to the evidence given before the Royal Commission on Liquor Licensing Laws.

P. followed by a number refers to the page of the final report of that Commission [C—9,379], 1899.

The references to "The Temperance Problem and Social Reform" by Rowntree and Sherwell are to the 8th edition (1900); there is in existence a 9th and a popular (abridged) edition.

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INTRODUCTION.

In a modern, civilised state it is generally accepted as a political principle that the interests of the individual must be subordinated to, or even disregarded in favour of, the public interest. When therefore as a deduction from this principle the legislature finds it necessary to deprive any individual or class of individuals of their property, their legal rights, their means of livelihood, or their reasonable expectations, the question arises whether it is not also to the interests of the community that these individuals should be compensated for the loss inflicted on them, or whether, apart from the

self-interest of the community, justice does not require that such individuals should be compensated.

Dr. Johnson defines "Compensation" to be "Recompense, something equivalent, amends"; but distinctions are often drawn between different kinds of compensation which are variously described as "full," "fair," "full and fair," "partial," "limited," "equitable," "adequate," "compassionate," and the word itself is sometimes replaced by the expressions "consideration," "solatium" or even "bribe."

The following are a few illustrations of the slight shades of meaning imported into these words by different persons. Thus "What difference do you draw between consideration and compensation"? "The difference drawn is that the one is almost the full amount, if not the full amount, of a man's laying down, and so on. The other is a matter of arrangement by either arbitration or something else, according to the circumstances of each case";[1] or "No money compensation is proposed, but an

[1] Mr. W. Touchstone, Q. 68,017.

equitable consideration";[1] or "During an interval holders of an expectation of renewal are to be given compensation as a sort of grace or solatium";[2] or "The money paid to West Indian Planters was paid by way of a bribe and not as equitable compensation";[3] or "You get the means for—I do not like to use the word 'compensation,' it is such a dangerous word to use, but—a 'solatium.'"[4] There is in fact not much value in these distinctions; the word "bribe" is used when in the opinion of the writer the parties receiving the compensation were not entitled to it as a matter of justice, or of general political expediency, but obtained it because of their political power. The words "fair," "equitable," "adequate," and the like, are generally used to imply that the person injured shall not receive compensation at the market value of his loss, but that his compensation shall

[1] Mr. D. M. Ross, *Dundee Advertiser*, 2nd April, 1895.

[2] *Daily Chronicle*, 19th July, 1899.

[3] Mr. W. S. Caine on "Compensation," Alliance Campaign Budget, 1895.

[4] Mr. G. C. Whiteley, Q. 2,943.

be substantial and sufficient on grounds of expediency. "Compassionate" is used when the compensation is given out of pity, and is not grounded on justice or reason. "Solatium" means much the same as "compassionate compensation."

These differences in phraseology do not so much indicate differences in the thing—the actual money payment or what not—as differences in the mental attitude of the speakers or writers towards the transaction under review. English law holds as a maxim that there is no wrong without a remedy. To escape from the consequence of this the law takes refuge in a foreign tongue and explains, in a case where an individual has been damnified but has no cause of action or right to compensation, that though the *damnum* is indubitable the *injuria* is wanting. By such quibbling the law attempts to hide its want of logical consistency and brilliantly demonstrates its commonsense.

The problem with which this Essay deals is to determine under what conditions compensation has been and should be given to

individuals when they are damaged by an enactment for the general good, and in particular to discuss whether any or what compensation should be given to those who hold licences for the sale of intoxicating liquors in the event of any legislation having the direct effect of dispossessing existing licence-holders of their licences.

For various reasons which will be specified later the latter problem is a very special and peculiar one and its solution is not made much easier by a study of the general problem; but a study of the general problem is useful, both as a means of clearing up some possible confusions of thought and as throwing light upon the ways in which such a problem can be approached.

The problem of compensation for publicans will be considered in the following way:—

1. First, the general question of compensation in any case of governmental interference with existing rights or expectancies will be considered in the light of the views of political theorists.

2. Next, a collection of various cases where

compensation has been given in England in the last hundred years will illustrate the views of the theorists and the practice of the legislature.

3. In the third place, the peculiarities of the present problem will be described in order to define the problem more clearly and to prevent the use of misleading analogies.

4. An examination of precedents for and against compensation for publicans in the British Colonies and the United States of America will throw some light on the practice of English-speaking people in this connexion.

5. The most recent proposals which have been made within and without the walls of the Houses of Parliament and the opinions of statesmen will be quoted to show the points of agreement and the points of difference which exist in the minds of the community on this point.

6. Finally, as a result of this previous enquiry, certain general conclusions will be drawn.

This procedure is adopted in order that the general reasoning may not be too abstract,

while at the same time the general principles upon which this question should be decided will not be submerged in a flood of detail. Arguments from precedent are singularly dangerous unless the most careful attention is given to the *general* principles to be deduced from the precedents and the *special* circumstances of the case under consideration. It is hoped that the scheme of procedure used in this Essay will enable the reader to detect inaccuracies and fallacies (if they exist) and to judge the general argument on its merits.

SECTION I.

THE GENERAL ARGUMENT FOR COMPENSATION.

WHAT is the general form of the argument in favour of compensation? It is put in various ways, which may be conveniently labelled under the headings: (*a*) vested rights or interests; (*b*) legitimate expectations; (*c*) justice; and—more rarely—(*d*) political necessity or expediency. In substance (*a*), (*b*) and (*c*), in so far as they are clearly defined, mean the same thing. In one form or another they import a moral obligation on the legislature to compensate; (*d*) imports nothing moral *per se;* but from the utilitarian point of view, which is often explicitly adopted by political theorists and implicitly adopted by politicians, there is not much difference between the statement that the legislature *ought* to compensate vested interests and the statement that it is *expedient* that it should compensate them. The grounds

of this expediency are largely economic. To enable the forces of production in any nation to be as effective as possible, it is imperative that persons and property should be secure. If uncertainty is produced by the action of the legislature business becomes speculative, capital becomes shy, and requires a high rate of interest or profit to coax it into a hazardous speculation. It is desirable then that so far as is possible investment of capital should be secure, and in capital we must include any form of special training required to fit a person for a business or profession. In so far as the legislature deprives people of property or occupations for which they have specially fitted themselves without compensation it creates a feeling of uneasiness in the rest of the community as well as one of disappointment in the particular individuals. Argument (*d*) is in reality a more cautious and correct way of stating arguments (*a*), (*b*) and (*c*).

MEANING OF "VESTED RIGHTS."

So much play is made with the phrase "vested rights" or "vested interests" that

it is imperative to ascertain the precise meaning of the phrase, and also so far as possible the impression which it makes upon the hearer. The legal use of the term "vested" as opposed to "contingent" is not here in question; it is the vulgar and more important use of the term which we have to consider. Let us first take an illustration. In Sir H. B. Poland's evidence before the Royal Commission on Liquor Licensing Laws he is examined at some length whether in his opinion the case of the ante-1869 beer-houses (the position of which is explained later) is a case of a vested interest. Sir H. B. Poland "ventures to submit that you cannot conceive a stronger case at the present day of a vested interest in those beer-houses."[1] He then expresses his opinion that in the case of any great legislative change vested interests are usually protected.[2] Now let us see what the publicists and writers on jurisprudence and politics say with reference to the term.

[1] Q. 1030. [2] Q. 1032.

AUSTIN'S OPINION.

Austin in his fifty-third lecture treats the subject briefly and clearly:—

"And here I would advert to a meaning, frequently annexed to the expressions '*vested rights*,' which is mentioned in Mr. Lewis's[1] treatise 'On the Use and Abuse of Political Terms.' When it is said that the legislature ought not to deprive parties of their 'vested rights,' all that is meant is this: that the rights styled 'vested' are *sacred* or *inviolable*, or are such as the parties ought not to be deprived of by the legislature. Like a thousand other propositions which sound speciously to the ear, it is either purely identical and tells us nothing, or begs the question at issue. If it mean that there are no cases in which the rights of parties are not to yield to considerations of expediency, the proposition is manifestly false, and conflicts with the practice of every legislature on earth. In every case, for example, in which a road or canal is run by authority of Parliament through the lands of private persons, the rights, or *vested* rights, of the private owners are partially abolished by the legislature. They are compelled to yield up a portion of their rights of exclusion, and to receive compensation agreeably to the provisions of the Act. When the expression 'vested right' is used on such occasions, it means one or another of two things: 1st, That the right in question ought not to be interfered with by the legislature; which (as I have remarked already) begs the question at issue; or, 2ndly; That, in interfering with rights, the legislature ought to tread with the greatest possible caution, and ought not to

[1] Afterwards Sir G. Cornewall Lewis.

abolish them without a great and manifest preponderance of general utility. And, it may be added, the proposition, as thus understood, is just as applicable to *contingent* rights, or to chances or possibilities of rights, as to vested rights, or rights properly so called. To deprive a man of an expectancy, without a manifest preponderance of general utility, were just as pernicious as to deprive him of a right without the same reason to justify the measure. Mr. Lewis has suggested that this use of the expression 'vested rights' might be borrowed from the cases in which, under certain rights, considerable capital has been invested or embarked by parties, and the privation of the right would be followed by great disappointment. And this phrase, I think, is usually applied emphatically to cases in which the abolition of the right would be followed by an extraordinary degree of disappointment."

Austin's position has never been seriously or successfully disputed, and the term is used in common parlance to suggest both the idea of sacredness and the idea of the magnitude of the disappointment which would be caused by such rights being interfered with without compensation. This idea of sacredness or inviolability is suggested with special force when the right has been given by the express enactment of the legislature as a special privilege, and this is what Sir H. B. Poland means when he says that he cannot conceive of a stronger case of vested

interests than that of the ante-1869 beer-houses. In the case of ordinary licensed premises (where as we shall see the disappointment would be enormous) the notion of the sacredness is absent because the legislature has not granted to the licensee any right to renewal of his licence. Hence, we find it stated that the rights of ordinary licence-holders are or are not a case of vested interests according as the one or other meaning of the term is most prominent in the mind of the speaker or writer. This confusion leads to difficulty because it is often treated as an axiom of modern statesmanship that vested rights should not be interfered with; and few would be found to dispute the proposition in this form. The moment, however, we come to apply the proposition great difficulty arises from the fact that in such a context the connotation of the word "vested" is extremely vague.

In substance there is agreement among political theorists in favour of the general proposition that vested interests should not be interfered with even when the proposition is held to mean merely that it is most

impolitic to disappoint the members of the community of any reasonable expectations upon which they have largely acted.

BENTHAM'S OPINION.

Bentham, indeed, neglects the element of sacredness or inviolability as is seen by the following quotation :—

"1. By means of the *non-disappointment* principle,—by this means and no other, can any determinate import be annexed to the locution *vested rights:* take away from it this import, suppose this import not to belong to it, none remains. In case of a right being taken away from a man, if the attributive *vested* be attached to it, what is thereby meant to be asserted is—that the pain of disappointment thereby produced in his instance is greater than would be produced by the loss of that same right if the attributive vested were not with propriety applicable to it. 2. When the idea in the mind, in so far as it is clear and determinate, is the idea of contrariety to the rule alluded to by the *non-disappointment* principle, two expressions commonly employed are—*contrary to the first principles of justice* and *contrary to every principle of justice.* Considered in themselves, these expressions are both of them nonsense—mere nonsense."[1]

And, again, "By the taking away of anything valuable, either in possession, or even though it be but in expectancy, so it be in fixed expectancy, whether on the score of remuneration, how excessive soever, or on any other score

[1] Edition of 1843, vol. 3, p. 388, note.

—pain of *frustrated expectation*—pain of disappointment, is produced. In the import of the above words, *fixed expectancy*, is contained whatever is rational and consistent with the *greatest-happiness principle*, in the pertinacity, manifested by the use of the English parliamentary phrase, *vested rights*."

The views of Austin and Bentham are sufficient to show that it is not useful to search for different arguments in favour of compensation, but that there is only one general principle underlying the general doctrine. Nevertheless the continued use of the phrase "vested rights" or "vested interests" undoubtedly requires some explanation. It is possible that a peculiar sacredness may appear to appertain to rights which cannot be taken away except by the express enactment of the legislature or by some very dignified procedure which is absent from those rights which can be taken away by a mere administrative act. In this sense the salary which attaches to the office of one of His Majesty's judges, the annuity granted by Parliament to the late Speaker of the House of Commons, or the freehold

Ibid. vol. 5, p. 277.

which a beneficed clergyman has in his living are vested in a sense in which the right to employment as errand boy at a certain salary in one of the Government offices and the office of curate are not. This distinction, if pressed, appears highly technical. Another possible ground for the persistence of the phrase is due to the vulgar idea that certain rights are secured by the sanction of a constitution, and in countries where there is a written constitution, it might be considered that rights which under the constitution are preserved and which cannot be taken away without an amendment of the constitution are vested. But this only illustrates and confirms the view that the non-disappointment principle is the true test, because the idea of inviolability which may attach to a constitution depends largely on the ease with which it may be amended. The general economic advantages in favour of security of property whereby business success becomes less a matter of good fortune and more a matter of industry have been already mentioned; but no one could seriously maintain that at

the present time and under present conditions the legislature should never encroach on the existing legally defined rights of individuals. The precise limits of governmental encroachment are better determined by experience than theory; but there is one recent writer on political theory whose balance and judgment were so singular that his views on the topic are entitled to the greatest respect and weight.

H. SIDGWICK'S OPINION.

In Chapter XII. of his work on Politics Henry Sidgwick discusses the question of governmental encroachment and compensation. The whole chapter should be carefully considered by all students of this question. The following passages state the matter with such moderation and fairness that not to quote them would be an inexcusable omission:—

"There are many historical instances in which legal rights having a definite market value have been completely abrogated in comparatively recent times, the most important being the abolition of slavery in America and of serfdom in Russia, and of manorial rights in other

parts of Europe: and the question of compensation has been of great practical importance in all these instances. Approaching the question from the one just discussed" (that is where the Government takes private property from a particular individual) "we can hardly doubt that compensation should be given in this case also; since the security at which law aims is no less intensely, and of course far more extensively violated if the legally secured interests of a particular class are sacrificed without compensation to the interests of the community, than it would be if an individual's interests were similarly invaded.

"And the same reasoning applies not only to the rights of property strictly so called, but to all rights legally secured that have a definite pecuniary value; such as lucrative monopolies, secured to companies or individuals either by express grant of Government, or by custom recognised as having legal validity, and rights to appoint or to be appointed to lucrative posts. There is more doubt as to another class of cases where the change consists merely in some restriction on the free use and exchange of things or the exercise of any lucrative or marketable rights, that still remain secured to their previous owners. . . .

"Any such restriction is likely to cause some economic loss to the person restrained; but such loss will generally be difficult to trace and define; and within limits the members of a progressive community may be suffered to look for minor changes of this kind, and may be fairly required to take the bad with the good;—as they are likely often to receive benefits from new laws for which they are not made to pay. Still, it seems clearly equitable that the compensation for governmental encroachment

on the legally secured interests of individuals should extend to cases of restriction on the exercise of rights, as well as to cases of complete abrogation; so far as (1) the rights in question were recognised as normally permanent, and (2) any part of the loss inflicted by the change is clearly and definitely ascertainable and considerable enough to constitute a substantial grievance. And at first sight it would seem that any such loss that is compensated at all should be fully compensated.

"There are, however, in many cases important considerations on the other side, tending to the reduction of the amount of compensation. The abrogation of the class of rights which we are considering is assumed to take place because the existence of these rights is opposed to public wellbeing. Now in such cases the degree of mischief that results from the mode of exercising such rights that is most profitable to their possessors may often be materially reduced if the possessors of the rights will consent to forego a certain amount of profit. . . . Under these circumstances there seems an obvious advantage in adopting the principle that compensation will only correspond to what the pecuniary value of the rights in question would be if they were exercised in the more moral but less profitable way: for otherwise pecuniary interest would prompt selfish owners of the right, during the period in which public opinion is growing in the direction of the change, to exercise their right to the utmost, in spite of the mischief, in order to establish a claim to larger compensation."

The author then proceeds to discuss the case where persons make money by practices which are almost universally condemned,

and concludes that in such a case the "most that can be required in the way of compensation is mitigation of any severe hardship that a sudden change in the law might sometimes cause."

In these passages the author expressly recognises rights which by custom have legal validity. There is little distinction between them and expectancies which are allowed to grow up under the law. The test which can be most fairly and easily applied is whether the right has a definite market value. If it has, there is an expectancy measured by that value.

The general argument for compensation may then be put in this form. If in the public interest the legislature decides to take away certain rights or expectancies of individuals, or a class of individuals, it should compensate them for the loss of such rights or expectancies, on the general ground that stability and security of property is of the utmost importance in human affairs and in fact constitutes one of the main marks of a civilised state. The importance of compensating depends largely

on the amount of the interference, and on whether or not capital has been invested on the basis of the expectation. The cases in which it may be fairly argued that full compensation should not be given are mentioned above by Henry Sidgwick.

Accepting then as true the commonplace that vested rights or interests should not be interfered with by the legislature, we see that it follows that in every case where there is a great disappointment of expectation by the legislature there is a *primâ facie* case for compensation, and the burden of proof is shifted on to those who would deny the right to compensation or wish to limit its amount.

SECTION II.

PRECEDENTS FOR COMPENSATION.

So far the views of political theorists have been considered, but such views are ordinarily founded not so much upon abstract reasoning or general considerations (although in form they appear to be), but upon a survey of the actual way in which legislatures have acted. Precedents are collected and compared, their likenesses observed and their differences distinguished; by this means general principles are extracted and may be applied, as tests, to other cases. In the subject under review the differences are greater than the likenesses, and greater to such an extent that arguments from particular precedents to a special case are of little value. But a survey of some precedents will serve to illustrate the justice of the views held by the political theorists, and to persuade us that certain arguments, which are used

both for and against compensation in the special case to be considered, are of little practical validity, Austin's test of disappointment being the main feature which runs through all the special cases. One fact comes out most clearly—that the precise legal rights of the parties injuriously affected are not of any importance except in so far as they have determined or may determine the degree of expectation from which, when unfulfilled, the disappointment results. The instances selected are merely those which are most frequently in the minds or words of those who discuss this topic. They are not arranged in any systematic order, and are not in any sense exhaustive.

(1) THE LANDS CLAUSES CONSOLIDATION ACTS.

On looking at the subject catalogue of any law library several books will be found under the heading "Compensation," but such books will be found to treat of the special cases where public companies have the power to take land for the purposes of

their undertaking on payment of due compensation to the owners of such lands. They will be legal text-books dealing with the Lands Clauses Consolidation Acts and other kindred Acts. How is compensation estimated under such Acts? Section 63 of the Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), runs as follows :—

"In estimating the Purchase Money or Compensation to be paid by the Promoters of the Undertaking, in any of the Cases aforesaid, regard shall be had by the Justices, Arbitrators, or Surveyors, as the Case may be, not only to the Value of the Land to be purchased or taken by the Promoters of the Undertaking, but also to the Damage, if any, to be sustained by the Owner of the Lands, by reason of the severing of the Lands taken from the other lands of such Owner, or otherwise injuriously affecting such other Lands by the Exercise of the Powers of this or the special Act, or any Act incorporated therewith."

To give a right of action for injuriously affecting, it is necessary that the particular injury for which compensation is claimed would have been actionable, if it had been done by an individual, or by the company before they had acquired their statutory powers.[1] In all cases which arise under the

[1] *Re Penny*, 7 El. & Bl. 660.

Lands Clauses Consolidation Acts the legislature has interfered with private rights for the public good, and it determines that compensation in the true sense of an equivalent or full compensation shall be given. It is important to note that, however much reformers have argued against compensation in certain special cases, it has rarely been seriously suggested that anything less than full compensation would be just and equitable in cases where land is taken for public or general purposes.

(2) SLAVERY.

The case of slavery has been much used as a precedent and analogy by those who argue for and against compensation for the loss of a licence. The case is one of great interest and importance, because *primâ facie* it is a case of partial or limited compensation, and should, therefore, indicate the principle and considerations which actuate the legislature in giving partial compensation. The slave trade was condemned without compensation, no doubt on the ground that it was so wicked and pernicious

that those engaged in it deserved no favours and had no right to expect lenient treatment. Probably the amount of capital engaged in it, in a specialised form, was small; and the slave traders were a small class of the community. It could hardly be argued that because such a trade was suppressed that those who carried on lawful and legitimate trades would feel their security endangered. Considerations of expediency had, therefore, but little weight. The trade was considered immoral, and, therefore, was suppressed.[1]

When therefore the time had come and public opinion was ripe for the suppression of slave-holding throughout the British dominions it must be remembered that the slave trade had been suppressed. Further, that there could be no proposal to limit the number of slaves; the only possible plan was to abolish slavery altogether. In 1823 the

[1] How far similar considerations might apply in the case of the suppression of licences will be considered later, but it is not seriously proposed to stop the brewing and distilling trades, but only the licences empowering private individuals to sell by retail in small quantities. See H. Sidgwick's opinion on p. 104.

House of Commons had passed a resolution in favour of abolition but with a fair and equitable consideration of the interests of private property.[1] When, in 1833, the Government brought forward their proposals for the abolition of slavery, the scheme was that the slaves became apprentices for twelve years, during which time they would be compelled to work for three-fourths of their time for their proprietors. It was proposed to advance a loan to the West Indies of a sum of £15,000,000 without interest for fifteen years. The theory seems to have been that this was equivalent to one-fourth of the value of the slaves' labour. Apparently it was considered that this scheme would properly compensate the slave-owners. It does not appear that any very accurate estimate of the value of the slaves had been made, but it was no doubt considered that this proposal would work substantial justice. These proposals by no means satisfied the body of persons interested in property in slaves. As a result of their pressure the

[1] 9. Hansard, 286, 360.

£15,000,000 loan was converted into an absolute gift of £20,000,000; as a slight set-off the period of apprenticeship was reduced from twelve to seven years. The legislature did not, however, intend that the compensation should be full, for the 24th section of 3 & 4 Will. IV. c. 73, recites that "Whereas, *towards* compensating the Persons at present entitled to the Services of the Slaves to be manumitted and set free by virtue of this Act for the Loss of such Services," the Commons have resolved to grant £20,000,000. This was distributed rateably among the Colonies in proportion to the number of slaves in each colony multiplied by their average market price during the eight years ending 31st December, 1830 (section 45). Roughly the slave-owner got about half the market value, and the advantage of the apprenticeship. This is a good illustration of the case where the word "bribe" is used. The Government yielded to pressure to pay more than they had originally intended to, not because they were convinced of the injustice of their former proposals or because they

wished to give full compensation, but solely because of the political pressure put upon them.

(3) PROCTORS.

An illustration of compensation to persons injured by the loss of a monopoly is afforded by section 105 of the Probate Court Act, 1857 (20 & 21 Vict. c. 77), which runs as follows :—

"'Whereas the Fees or Emoluments of the Persons now practising as Proctors in the Courts now exercising Jurisdiction in Matters and Causes Testamentary may be damaged by the abolition of the exclusive Rights and Privileges which they have hitherto enjoyed as such Proctors in such Courts:' Be it enacted, That the Commissioners of Her Majesty's Treasury . . . may . . . ascertain and absolutely determine the net annual Amount of the Profits arising from the Transaction of Business by Proctors in Matters and Causes Testamentary, on an average of Five Years immediately preceding the Commencement of this Act . . . and shall award to each and every such Proctor a Sum of Money or annual Payment during the term of his natural Life of such Amount as shall be equal in Value to One Half of the net Profits derived by such Proctor in respect of Matters and Causes Testamentary upon the said Average of Five Years . . ."

Section 109 of the same Act, which gives compensation to Sir J. Dodson in case he

be not appointed Judge of the Court of Probate, illustrates a case of compensation to a person for the loss of an office which might reasonably be supposed to be permanent.

(4) ARMY PURCHASE.

The most surprising case of compensation is that which was given when the purchase of commissions in the army was abolished. There was a fixed scale of prices prescribed by the regulations. By section 8 of 49 Geo. III. c. 126 :—

"Every Officer in His Majesty's Forces, who shall take, accept, or receive or pay, or agree to pay any larger Sum of Money, directly or indirectly, than what is allowed by any regulations made by His Majesty in relation to the Purchase, Sale, or Exchange of Commissions in His Majesty's Forces, or who shall pay, or cause to be paid any Sum of Money, to any Agent or Broker, or other person for negotiating the Purchase or Sale or Exchange of any such Commission, shall, on being convicted thereof by a General Court Martial forfeit his Commission, and be cashiered . . . every Person who shall sell his Commission in His Majesty's Forces and not continue to hold any Commission in His Majesty's Forces, and shall, upon or in relation to such Sale, take, accept, or receive directly or indirectly any Money, Fee, Gratuity, Loan of Money, Reward, or Profit, or any Promise, Agreement, Covenant,

Contract, Bond, or Assurance, or shall by any Device or Means contract or agree to receive or have any Money, Fee, Gratuity, Loan of Money, Reward, or Profit beyond the regulated Price or Value of the Commission sold, and also every Person who shall wilfully or knowingly aid, abet, or assist such person therein, shall be deemed and adjudged guilty of a Misdemeanour. . . ."

Yet on the abolition of purchase in the army the officers then in service were compensated on the basis not only of the regulation price but also of the over-regulation price: that is, the customary sum payable in a regiment beyond the regulation price. This is certainly most remarkable. A custom had grown up in spite of continual prohibitions by the Commander-in-Chief, by the Annual Mutiny Act, and the statute above quoted. The custom was not only non-legal but criminal, and yet the legislature decided to pay several millions of pounds to persons as compensation to them for not being permitted to continue to infringe a penal statute. It is noteworthy too that this was not a case of an important trade in which capital had been embarked, or in which very many persons were directly or indirectly employed, but of a traffic which

was not only against the public interest as well as the law, but in which no capital or labour was embarked. If no compensation had been given there would have been almost no disturbance to the economic equilibrium of the country. The ground, therefore, can only have been that great disappointment would have been felt by a class of persons who were powerful in the country. To quote this as a precedent is almost absurd; logically, it would lead to the result that we should compensate a burglar for his loss of trade when sent to penal servitude. It was argued that, though illegal, these sales and purchases were made with the knowledge of, and therefore with the sanction of the Government—a most dangerous argument, and yet one of great force to many minds. This case shows how much attention the legislature pays to the expectations of mankind based on continual custom to the entire exclusion of all questions of legal rights or even, except in a remote degree, of economic expediency.

The view that the legislature should recognise no expectation in illegality was

strongly held by Sir John Franklin when the question of compensating certain distillers in Van Diemen's Land (of which he was Governor) arose. An Act entitled "The Distillation Prohibition Act" was passed in that colony in the year 1838, which in the preamble contained a pledge to compensate the distillers and rectifiers and compounders. When the time came to fulfil this pledge certain resolutions as to the manner of carrying it out were moved in the Legislative Council on the 22nd June, 1838; two of these were as follows:—

"2. That it is the opinion of this Council that any Rectifier and Compounder who has been in the habit of selling rectified spirits contrary to the provisions of law ought not to be compensated for the loss of such trade.

4. That it is the opinion of this Council that any applicant having been proved to the satisfaction of this Council to have been in the habit of distilling contrary to law, has by that practice cancelled all claim he might otherwise have had to compensation."

In a minute (2nd September, 1839) of Sir John Franklin's on the subject he goes so far as to wish to throw the *onus* of proving that the distillation had been legal on the distiller. This instance suffices to show

that the case of Army Purchase must not be taken as a precedent without great caution.

(5) LOTTERIES.

The case of Lotteries is sometimes quoted as analogous to that of the drink traffic; but the analogy does not go very far. Lotteries were at one time a recognised form of raising revenue,[1] and in addition to these public lotteries there were at the end of the 17th century lotteries purporting to be held under patents or grants, and lotteries without any authority at all. The Act of 10 & 11 Will. III. c. 17, declared lotteries to be public nuisances and all grants thereof void. A succession of statutes[2] with the same object indicates that the legislation was not completely successful. Finally, in 1782, an Act (22 Geo. III. c. 47) was passed for licensing Lottery Office Keepers and regulating the sale of Lottery Tickets. By section 2 no person is to keep a lottery

[1] For the economics of public lotteries, see Sieghart, "Die Oeffentlichen Glückspiele."

[2] 9 Anne, c. 6; 10 Anne, c. 26; 5 Geo. I. c. 9; 8 Geo. I. c. 2; 9 Geo. I. c. 19; 12 Geo. II. c. 28.

office without taking out a licence from the Stamp Office. By section 3 a licence is to cost £50, and by section 4 "such licence shall continue in force for twelve calendar months from the date thereof and no longer." The licence was forfeited if the licensee was convicted of any offence against the Act. Another Act "to render more effectual the Laws now in being for suppressing unlawful Lotteries" (27 Geo. III. c. 1) was passed five years later. Finally, in 1823, it was decided to be expedient to discontinue raising money for the public service by way of lottery. Public lotteries being then thus discontinued, no one could any longer have any legal ground for keeping a lottery office. The holders of annual licences were not compensated. It is not possible now to ascertain how great the expectation of the renewal of their licences may have been; but it is not probable that the expectation of renewal had any market value. It appears to be the case that any one (who had not been convicted of an offence against the Lottery Acts) could take out a licence on paying £50 and giving a bond to His

Majesty. On the other hand, by section 20 of the Act of 4 Geo. IV. c. 60 (the last Act granting a sum of money to be raised by lotteries), it is enacted that "after the Conclusion of the Drawing of the Lotteries authorised by this Act, it shall and may be lawful for the said Commissioners of His Majesty's Treasury to grant such reasonable Allowances or Compensations as they may deem just and fit, to such of the Commissioners, Officers, Clerks, and others theretofore employed in the Drawing of the Lottery, and in Matters relating thereto, as may appear deserving of the same, . . ." This is a case of the Government compensating their servants for loss of employment.

(6) THE IRISH CHURCH.

When the Irish Church was disestablished by the Irish Church Act, 1869 (32 & 33 Vict. c. 42) compensation on a very lavish scale was given to all those formerly employed by the Church. The holders of archbishoprics, bishoprics, benefices[1] or cathedral preferments and permanent curates received life

[1] Sect. 14.

annuities equal to the amount of their yearly income;[1] non-permanent curates a gratuity of £25 for each year they had served as curates. Further compensation was given to diocesan and district schoolmasters, clerks, sextons,[2] and other persons,[3] and finally compensation to lay patrons.[4] Mr. Gladstone was most vigorous in saying that every vested right must receive absolute compensation and satisfaction. Certainly in this case expectancies were not disappointed; and as some education is necessary to enable a man to take Holy Orders, it may be considered that some capital had been invested in this profession.

(7) TELEGRAPH COMPANIES.

In 1868 the Act which enabled the Postmaster-General to acquire the Electric Telegraphs from the Telegraph Companies (31 & 32 Vict. c. 110) provided that:—

"Every Officer and Clerk of any Company, the Undertaking of which may be so purchased, who has been not less than Five Years in the Service of Telegraph Companies,

[1] Sect. 15.
[2] Sect. 16.
[3] Sect. 17.
[4] Sect. 18.

and in the Receipt of a yearly Salary, or who has been not less than Seven Years in the Service of Telegraph Companies, or in receipt of Remuneration at a Rate of not less than £50 a Year shall, if he receives no Offer of an Appointment by the Postmaster General in the Telegraphic Department which shall be deemed by an Arbitrator . . . to be of equal Value to the Appointment held by him under any Company, receive during his Life from the Postmaster General, by way of Compensation for the Loss of his Office from the time at which the Government takes possession of the Company's Telegraph, an Annuity, payable half-yearly, equal, if he shall have been in the service of the Telegraph Companies Twenty Years to Two Thirds of the annual Emolument derived by him from his Office on 24th June, 1868, and with respect to any such Person who had been in such service less than Twenty Years the said Annuity shall be diminished at the Rate of One Twentieth for every Year less than Twenty Years during which he has been in such Service."[1]

This provision of a retiring pension of two-thirds of the officer's salary is very full compensation. Any of the Telegraph Companies could doubtless have dismissed their officers at pleasure.

(8) OFFICERS UNDER THE LOCAL GOVERNMENT ACTS.

There is a very large number of cases of compensation to persons for the loss of

[1] Sect. 8 (7).

their office on its being abolished by Act of Parliament. An Appendix is given containing a list of Acts under which such compensation may be claimed.

The two factors determining the amount of compensation are nearly always the amount of past profits and the age of the person to be compensated. By section 120 of the Local Government Act, 1888 (51 & 52 Vict. c. 41) :—

"(1) Every existing officer declared by this Act to be entitled to compensation, and every other existing officer, whether before mentioned in this Act or not, who by virtue of this Act or anything done in pursuance of or in consequence of this Act, suffers any direct pecuniary loss by abolition of office or by diminution or loss of fees or salary, shall be entitled to have compensation paid to him for such pecuniary loss by the county council, to whom the powers of the authority whose officer he was, are transferred under this Act, regard being had to the conditions on which his appointment was made, to the nature of his office or employment, to the duration of his service, to any additional emoluments which he acquires by virtue of this Act or of anything done in pursuance of or in consequence of this Act, and to the emoluments which he might have acquired if he had not refused to accept any office offered by any council or other body acting under this Act, and to all the other circumstances of the case, and the compensation shall not exceed the amount which, under the Acts and rules relating to Her

Majesty's Civil Service,[1] is paid to a person on abolition of office."

An officer means a person holding any place, situation, or employment.[2] By section 81 (7) of the Local Government Act, 1894 (56 & 57 Vict. c. 73), the section last quoted "shall apply in the case of existing officers affected by this Act, whether officers above in this section mentioned or not, as if references in that section to the county council were references to the parish council, or the district council, or board of guardians or other authority whose officer the person affected is when the claim for compensation arises as the case may require." Under a similar Act[3] even an office boy has been held to be an officer.[4] Further, although the office may be one held during pleasure, the compensation may be given as for an office held for life.[5] And by the London

[1] These are regulated by the Superannuation Acts, 1859 and 1884 (22 Vict. c. 26 and 47 & 48 Vict. c. 57).

[2] Sect. 100.

[3] The Metropolis Management (Plumstead and Hackney) Act, 1893 (56 & 57 Vict. c. 55).

[4] *Legg* v. *Stoke Newington Vestry*, 59 J. P. 696.

[5] *R.* v. *Norwich*, 8 A. & E. 633.

Government Act, 1899,[1] section 81 (7) of the Local Government Act, 1894, is applied for the purpose of calculating the compensation to be paid to assistant overseers, rate collectors and other officers whose offices are abolished by the Borough Councils.

(9) THAMES FERRYMEN.

Lastly, to illustrate the case of compensation for loss of employment owing to the competition of a public improvement, section 32 of the Thames Tunnel (Greenwich to Millwall) Act, 1897 (60 & 61 Vict. c. ccxxiv.) may be quoted:—

"The licensed ferrymen of the Company of Watermen and Lightermen of the River Thames who now are and have been working from Upper Watergate Deptford to Cocoa Nut Stairs Millwall for three years before the passing of this Act (including any person who was an apprentice to any such ferryman at any time within the said period of three years and shall be a licensed ferryman working between the said points at the time of the opening of the subway) shall be respectively entitled by way of compensation to such sum of money to be paid by the Council at such time as may be or may have been agreed between such ferrymen and the Council or in default of agreement to such sum as after the

[1] 62 & 63 Vict. c. 14, s. 30 (2).

opening of the subway may be determined to be fair and reasonable by an arbitrator to be appointed by the Board of Trade on the application of either the Council or any such ferryman."

CONCLUSIONS.

With the exception of the Slave Trade and the Lottery Licences, all these examples (and they could be greatly increased in number) show that compensation has been given, not only when actual property has been taken away or valuable monopolies destroyed, but also when expectations of employment have been damaged. The probable reason why the slave traders were not compensated is that their business was repugnant to the moral sense of almost the whole community. The non-disappointment principle hardly applies to the holders of lottery licences, because such licences were not valuable franchises. The market value of such a licence being very small, the disappointment at its not being renewed, especially as public opinion had condemned lotteries as a method of raising public moneys, was exceedingly small.

The non-disappointment principle is applied not only to cases where capital has been invested under the cover of definite legal rights or special advantages have long been enjoyed, but also to cases where no capital has been invested and even where the expectant advantage is a criminal one. On the other hand, the legislature is continually restricting rights of user of property (as when it prevented the sale of advowsons by public auction[1]), or diminishing the probability of profitable employment in some business or profession. But in these cases the damage is in general indirect, remote and small, and the amount of disappointment cannot be measured in terms of money. It is a condition precedent to any compensation that the amount of damage is large. *De minimis non curat lex.* When the damage is large, and has a definite money measure, and especially when capital has been invested in acquiring the property, the expectancy, or the proficiency in a particular employment, the case for compensation is of the strongest kind.

[1] The Benefices Act, 1898 (61 & 62 Vict. c. 48), s. 1 (2).

SECTION III.

SPECIAL FEATURES OF THE POSITION OF A LICENCE-HOLDER.

In the particular case of compensation for the loss of the peculiar form of property called a justices' licence and the expectation of renewal of it, we find various features in the legal rights and interests of licence-holders which prevent us from deriving much assistance from precedent or analogy. Although it is of the first importance in discussing this topic, as has already been pointed out, not to look at the technical legal rights, but rather at reasonable and legitimate expectation, yet because the reasonableness and legitimacy of the expectation is determined to a great extent by the actual legal rights and the actual practice of those who administer the law, and because a great deal of argument is continually based upon an examination of the precise legal rights of licence-holders, it is well to state

and consider what these rights are. A complete or even a full or accurate statement of the legal position of a licence-holder is a very elaborate matter and should be gleaned either from text-books on the Licensing Laws or the Reports of the Royal Commission on the Liquor Licensing Laws.[1] There is a great variety in the kinds of licence, but the position of the holder of a full justices' licence for sale of beer and spirits on the premises exemplifies the position of a licence-holder sufficiently for the present purpose.

(1) THE LEGAL POSITION.

The licence lasts for one year and for one year only, but the legislature appears to contemplate a renewal of the licence in the ordinary course. This is shown by the difference of procedure between the cases of the grant of a new licence and the renewal of an old one. In one case indeed, that of the beer-houses in existence before 1869 (which have been previously referred to as ante-1869 beer-houses), the justices cannot

[1] C. 9,379.

refuse to renew the licence[1] except on one of the four grounds :—

"(1.) That the applicant has failed to produce satisfactory evidence of good character :

"(2.) That the house or shop in respect of which a licence is sought, or any adjacent house or shop owned or occupied by the person applying for a licence, is of a disorderly character, or frequented by thieves, prostitutes, or persons of bad character :

"(3.) That the applicant having previously held a licence for the sale of wine, spirits, beer, or cider, the same has been forfeited for his misconduct, or that he has through misconduct been at any time previously adjudged disqualified from receiving any such licence, or from selling any of the said articles :

"(4.) That the applicant or the house in respect of which he applies, is not duly qualified as by law is required." [2]

Except in the case of an ante-1869 beer-house, the grant of a renewal rests in the discretion of the justices, but such discretion should be judicially exercised in the case of each licence.

Licences are granted at annual licensing meetings of the county justices in every petty sessional division and of the borough

[1] It is called a certificate.

[2] The Wine and Beerhouse Act, 1869 (32 & 33 Vict. c. 27), s. 8.

justices in every borough having a separate commission of the peace.[1] The grant of a new "on" licence requires confirmation. In county districts the confirming authority is the county licensing committee; in boroughs where there are more than ten justices of the peace it is the whole body of the borough justices save those disqualified from acting in licensing matters; in the other boroughs the licences go for confirmation to a joint committee of justices of the county and the borough. The law as to renewal is thus stated in the Majority Report of the Royal Commission on Liquor Licensing Laws[2]:—

"Apart from these cases" (the ante-1869 beer-houses) "the distinction between the position of an applicant for a renewal and one who seeks a new licence is clearly marked in the Licensing Acts. In the case of renewal no notice of application for the licence is required and the attendance of the applicant is not compulsory in the absence of a requisition to the justices to attend. If an objection is to be heard to a renewal, seven days' notice must be given to the licensee. An objection may be taken in Court and without notice; but the justices are not entitled to hear it unless they adjourn the case and require the licensee to attend at a subsequent date, when

[1] P. 11. [2] P. 12.

the matter is heard in full. All evidence must be given on oath, and in the event of the renewal being refused, there is an appeal to the county quarter sessions. In addition, with regard to renewals, there are special provisions for protecting the rights of owners. In the event of a renewal being refused, the owner has a right of appeal as a party aggrieved. In section 50 of the Act of 1872[1] it is enacted that a copy of the notice of an application for an order sanctioning the removal of a licence shall be served upon the owner of the premises whose consent to such a removal is a condition of its being made. Section 56 of the Act of 1872 moreover provides for the protection of the owners of licensed premises in cases of offences committed by their tenants, and section 15 of the Act of 1874[2] enables the owner to obtain a temporary authority to carry on the business when the licence is in certain cases forfeited by the licensee."

A further piece of evidence that the legislature contemplates renewal in the ordinary course of events is shown by section 22 of the Licensing Act, 1874,[3] by which—

"Any person interested in any premises about to be constructed or in course of construction for the purpose of being used as a house for the sale of intoxicating liquors to be consumed on the premises may apply to the licensing justices and to the confirming authority for the provisional grant and confirmation of a licence in respect of such premises; and the justices and confirming

[1] 35 & 36 Vict. c. 94.
[2] 37 & 38 Vict. c. 49.
[3] 37 & 38 Vict. c. 49.

authority, if satisfied with the plans submitted to them of such house, and that if such premises had been actually constructed in accordance with such plans they would, on application, have granted and confirmed such a licence in respect thereof, may make such provisional grant and order of confirmation accordingly. A provisional grant and order of confirmation shall not be of any validity until it has been declared to be final by an order of the licensing justices, made after such notice has been given as may be required by the justices at a general annual licensing meeting or a special sessions held for licensing purposes. Such declaration shall be made if the justices are satisfied that the house has been completed in accordance with such plans as aforesaid, and are also satisfied that no objection can be made to the character of the holder of such provisional licence. . . ."

In accordance with the provisions of this section large sums of money have been spent upon buildings specially adapted for the trade of a licensed victualler, the plans of which had been previously sanctioned by the licensing justices. It is difficult to believe that the legislature intended that a man who had invested his capital in building premises in accordance with a provisional grant should not in the ordinary course of events be permitted to continue to use the premises for the trade for which they were specially adapted. And it may be added that the

justices have power to make a final order, notwithstanding certain alterations in the plan, where these alterations are not substantial.[1]

In fact, the *locus standi* for renewal is recognised by the legislature in a variety of ways, and can never be lost sight of. In the special case of the ante-1869 beer-houses, this *locus standi* for renewal is converted into an absolute right to renewal, subject only to the fulfilment of certain conditions.

Undoubtedly a licence is a form of property of a very special and peculiar kind. It does not, for example, vest in the trustee in bankruptcy on the failure of a licence-holder; and where a lease of a public-house determinable on the bankruptcy of the lessee contained a covenant by the lessee upon the determination of the term to assign the licences to the lessor and the lessee became bankrupt before the expiration of the term, it was held that his trustee in bankruptcy took no interest in the licences and that the

[1] *R.* v. *The Justices of the County of London*, 62 L. T. N. S. 458; 24 Q. B. D. 341; and see Mr. Buxton's evidence before the Royal Commission (Q. 35,062 *et seq.*) and Sir H. B. Poland's (Q. 1,070).

covenant was valid, entitling the lessor to have the licences delivered up to him though they were not assignable (*Ex parte Royle, Re Britnor*, 46 L. J. N. S. Bankruptcy 85).

But, as a matter of practice, the licence is, in an ordinary case where a licence-holder becomes bankrupt, transferred to his trustee in bankruptcy,[1] and thus the creditors obtain the value of the licence, so that in substance, though not in law, a licence is property of which the creditors of a bankrupt licensee obtain the benefit.

Lord Selborne's description of the interest of a publican in his licence is an interest for a year with a *locus standi* for renewal, recognised by law and reason, though precarious, and depending upon the exercise of judicial discretion in case of opposition.

(2) THE PROBABILITY OF RENEWAL IS VERY HIGH.

This is shown by

(i.) LEGAL DECISIONS.

Under the present administration of the law the probability of renewal is often

[1] See The Alehouse Act, 1828 (9 Geo. IV. c. 61), s. 14.

described as a practical certainty. The law recognises that in general this probability is very large. Thus, in the case of *Belton* v. *The London County Council* (68 L. T. N. S. 411), it was held that, in estimating the compensation to be paid under the Lands Clauses Consolidation Acts to a claimant in respect of the reversion of licensed premises held under a lease of which twenty-six years are unexpired, the arbitrator is entitled and ought to admit evidence to prove the present market value—that is, the price that would be paid in the open market—of the claimant's reversionary interest in the premises as licensed premises, and is not bound to confine the evidence to the estimated rental value of the premises as a house and shop, apart from the question of whether when the reversion falls in they would then be licensed premises. The present value of a reversion twenty-six years off is but $\frac{36}{100}$ths[1] of its present value in possession. If the probability of renewal in one year were ten to one, the probability of the premises being licensed at the end of twenty-six years would

[1] On a 4 per cent. basis with yearly rests.

be only one-tenth. It is, therefore, not unfair to assume that the probability at the present time of renewal in the near future must be regarded as very much greater than ten to one.

And in the case of *Cocks* v. *Lady Henry Somerset* (11 Times Law Reports (1895), p. 567), a remainderman restrained Lady Henry Somerset, who was tenant for life, from leasing an old licensed house with a covenant not to use the premises for the sale of intoxicating liquors.[1] In cases under the Lands Clauses Consolidation Acts, compensation is always given on the footing that the licence will in all probability be renewed annually.

(ii.) INSURANCE RATES.

There is another and more accurate way of measuring this probability or practical certainty of renewal.[2] It is now a common practice for brewers and others to insure against the loss of their licence, and companies exist whose sole business is concerned with such assurance. The result is that

[1] The Court made a declaration only—no injunction was claimed.

[2] Q. 35,115.

business men find that in most parts of England there is a practical certainty of renewal so long as there is no misconduct. At one time a certain insurance company made a distinction between ante-1869 and other beer-houses, on the ground of the peculiar right to (instead of probability of) renewal which existed in the case of the former, but it was found that in practice there was no valid ground for charging different rates of premium in the two cases. The actual rates of insurance, for brewers insuring all their licences, charged by the Licences Insurance Corporation and Guarantee Fund Limited, are as follows :—

Insurable value of each licence.	For each £100.
£5,000 and upwards	2*s.* 6*d.*
£2,500 ,,	3*s.* 0*d.*
£1,000 ,,	3*s.* 6*d.*
Under £1,000	4*s.* 0*d.*

These rates are subject to increase in districts where the authorities are exceptionally exacting, or upon houses in low

neighbourhoods and difficult to manage. The rates for single houses average 6*s*. per cent. An insurance company, in order to make its profit, must charge higher rates of premium than those based upon the exact chance of the loss of licence, and, therefore, when for instance the premium in the case of an insurance for £5,000 is 2*s*. 6*d*. per £100 this indicates that in the opinion of the insurance company the chance that the licence will not be renewed is less than one in eight hundred.

Taking 6*s*. per cent. as the average rate at which a licence can be insured for one year, we see that the odds are a good deal more than three hundred to one in favour of a licence being renewed. Undoubtedly in most places in the case of a respectably conducted house the probability of renewal is a practical certainty, and the risks against which the licence-holder insures are almost entirely the risk of losing the licence through some form of misconduct. Out of a selection of fifty claims paid by the corporation above referred to, only ten of the causes of refusal

to renew the licence were on the ground that the house was not required. And in some of these cases it is likely that, though the alleged reason was that the house was not required, it is probable that there had been complaints against the house. It is not uncommon for this ground to be given when it is not the sole ground but only one of the grounds. Conclusions drawn from statistics of the number of licences not renewed on the ground that the houses are not required are liable to be fallacious.[1]

The rates for the insurance of the licences of small houses in the county of Lancaster and in North Wales are considerably higher; so much so, that perhaps it is not more than two hundred to one that the licence will be renewed. But a two hundred to one chance may be for business purposes a practical certainty.

The rates of insurance above given are, of course, the rates for one year only, and it is doubtful whether an insurance company would be willing to quote rates for a large number of years in advance. At any rate,

[1] Q. 35,090.

it must not be assumed that from these rates we can calculate the chance that a given licensed house will be licensed (say) thirty years hence. But they suffice to show that the immediate expectation of renewal is very great. It is also possible to insure a mortgage debt and interest secured upon licensed property for a period of five years at least, at rates which indicate a very strong probability that a licensed house, which at the present time is well conducted, will be a licensed house five years hence.

(iii.) STATISTICS.

A third method of testing the probability or reasonable expectation of renewal remains. This is to see how many licences are in fact annually not renewed on grounds other than misconduct. From a study of the return of "Intoxicating Liquor Licences Refused," Mr. E. N. Buxton[1] has calculated that a licensee's chance of renewal is about 10,000 to one, and he believes that in the case of licences of value in large towns the chance is much higher than that.

[1] Q. 35,090.

(iv.) MARKET VALUES.

In the fourth place, market values appear to be calculated on the assumption that licences are practically permanent, and the officials of the Inland Revenue Department at Somerset House adopt this view for the purpose of calculating the death duties payable on the death of any person. In a memorandum issued by that department on 14th May, 1890 setting forth the practice of the department, for the purpose of probate duty it is assumed that the licence will continue, and for the purpose of succession duty it is assumed that the licence will endure during the whole life of the successor. At the present time, estate duty having taken the place of probate duty, the valuation is based upon the market value, and this value at the present time is based upon the practical certainty of renewal.

From this we may conclude that, however much it may be asserted that while the ante-1869 beer-houses (where there is a perpetual right of renewal) are a strong case of vested interests, the ordinary licensed house must be regarded as having a mere

hope of renewal, and therefore a weak case of vested interests, such assertions are based upon a technicality which does not affect the ordinary dealings with this kind of property. The expectation of renewal, which gives the value to the *locus standi* for renewal, is very great, and the expression, "a practical certainty," is rarely used with greater precision than when the expectation of renewal of the licence of a well-conducted licensed house is described as "a practical certainty."

(3) LICENSED PREMISES ARE MORTGAGED.

Another special feature of the position of a licence-holder is the fact that in general this form of property is heavily mortgaged. Brewers and distillers usually have mortgages on licensed houses, and the actual interest of the licensee in the licensed premises often does not extend to more than one-fifth or one-sixth of their value. If licences are to be suppressed without compensation a great part of the loss would fall upon the trades of brewing and distilling. It is urged that compensation should not extend in such a case to brewers and distillers

on the grounds (1) That if only some licensed houses are suppressed they will recoup themselves by the increased value of the others — this point is considered later — (2) That in some sense the trades of brewing and distilling are becoming monopolies. It is also urged that the value of a licence depends largely upon the fact that the number of licences is limited and that it is the monopoly created by the action of the licensing authorities in not giving licences freely which makes this value so high. There is a not unnatural prejudice against monopolies (except state and municipal ones), and the brewing trade is often attacked on the ground that it is a great and dangerous monopoly. In any investigation, therefore, of the special features of the problem of compensation in this case this question of monopoly should be carefully considered. Great confusion is often caused by the use of the word "monopoly" in different senses. Sometimes it is used to denote that the supply of an article is limited; sometimes that the supply is in the hands of one person or united set of persons.

A licence is a monopoly in the first sense, because the number of licensed premises is limited; although in many places this number is so great as to detract from the practical value of any argument based on the assumption that the supply of licensed houses is much restricted. In the other sense there is no general monopoly of the supply of beer because there are a large number of brewers in the country between whom competition is very keen. Hence from the point of view of the production of beer and spirits there is no monopoly. Thus the second argument—that the trades of brewing and distilling are monopolies—is seen to have little force. The fact that a licence-holder is often a monopolist, and has paid for his monopoly, is a reason for compensating him for the loss of his licence.[1]

Further, brewers and distillers are not the only persons who have mortgages on public-houses. Bankers, public companies, and private individuals lend money upon the security of this class of property, and therefore any sudden suppression of a large

[1] See p. 104 for the contrary opinion.

number of licences would injuriously affect many persons in no way connected with the trades of brewing or distilling. Perhaps too much has been sometimes said[1] to the effect that trustees frequently invest trust funds in this sort of property, and that many widows and orphans would be left penniless if the interests of mortgagees were not safeguarded, but such exaggerations have an element of truth in them which should not be forgotten.

(4) THE INTERESTS ARE LARGE AND WIDESPREAD.

Another respect in which this question of compensation for licences which are suppressed for the public benefit is singular is due to the fact that the magnitude of the pecuniary interests involved is very great and that the number of persons so interested is extremely large. These facts are notorious. The number of fully licensed houses is about 67,000; the number of "on" beer-houses, or beer and wine-houses, and "on" wine-houses is about 35,000. Their value is very

[1] *E.g.* by Sir H. B. Poland (Q. 1045).

great. The value of the "on" and "off" licences in the Metropolitan Police District (including the value of the premises) is £60,000,000.[1] In some cases a licence will be worth £10,000 to £12,000. The capital invested in the trades of brewing and distilling is enormous—probably more than £200,000,000.

But what is even more important is the fact that owing to the development of the joint stock company system interests in brewing and distilling have become very largely diffused throughout the population; so that the number of persons who would be directly affected by any wholesale suppression of licences would be very large and would belong to all classes of society. Large London Brewery Companies are either owners or mortgagees of many public-houses in London, and their shareholders are drawn from all classes of society.[2]

[1] Q. 35,020.

[2] In the well-known companies of Guinness and Bass, "peers and titled persons and doctors are, after women, the most numerous class. In the same company (Guinness) are 178 persons bearing the title of 'Rev.,'

These facts make it abundantly clear that if the legislature suddenly suppressed a large number of licences there would be, in Austin's phrase, "an extraordinary degree of disappointment;" and this extraordinary degree of disappointment would be felt by a very large number of persons of very various classes. In most cases where the legislature has interfered for the public good the magnitude of the disappointment has been less and would have been borne by a much more restricted class. From the point of view of abstract justice such considerations may be considered irrelevant; but from the point of view of political expediency, which sees a greater danger in disturbing the expectations of the many than in disturbing those of the few, such considerations may be of the first importance.

including bishops, deans, archdeacons and canons." (*The Temperance Problem and Social Reform*, p. 91.) Guinness's, however, is not one of the companies which owns houses largely. The fact that the number of interested persons is large tends to diminish the amount of individual loss.

THE PRESENT DIFFICULTY.

The general policy of the law in the matter of licences for the retail sale of liquor appears to be that the public should have reasonable drinking facilities and that the houses for the sale of liquor should be properly and respectably conducted. Has this been the result of the law as it has been in fact administered? This question is thus answered by the Majority Report of the Royal Commission on Liquor Licensing Laws[1]:—

"It is generally admitted that the number of licences in a great many parts of England and Wales is in excess of the requirements. Parliament itself is in a great measure answerable for this. By the Act of 1830 an experiment was made in the direction of free trade in beer. This measure was opposed by the official representatives of the trade, who objected to the increased competition that would follow. As a matter of fact, 30,000 beer-houses came into existence on the passing of this Act. Parliament, seeing its mistake, passed, in 1869, an Act to check the excess in "on" beer-houses which, by that date, numbered about 50,000; but it deliberately protected the existing houses. Nor can the Licensing Authorities be held to have been altogether blameless, as in certain districts the grant of more new licences than were needed

[1] P. 6.

caused congestion, which still exists notwithstanding the growth of population. The limitation of licences in proportion to population was proposed in Mr. Bruce's Bill of 1871; but we are not satisfied on the evidence that there is a necessary connection between the proportion of licences to population and the amount of drunkenness. . . . On the other hand, when an excessive and unnecessary number of licensed houses are crowded together in a limited area more drinking probably does prevail; and a large reduction is much to be desired, because it would facilitate effective supervision by the police, and would diminish competition and improve the status both of the premises and the licensees."

The excessive number of licensed houses (if it is excessive) is then due to two causes: (1) the mistaken action of Parliament in 1830; (2) the unwise administration of the law by the justices. Setting aside the question of the ante-1869 beer-houses, why cannot this state of affairs be remedied by an efficient administration of the law? In many cases the justices are most careful not to increase the number of licences and make some effort to diminish the number. But most efforts to reduce the number of licensed houses to reasonable limits are hampered by the fact that the number cannot be reduced without special hardship to individuals

arbitrarily selected. In the first place, it is clear that when the licences were originally granted the justices were of opinion that the number was not excessive. They would be administering the law improperly if they granted a new licence where it was not required. Public opinion has, however, undergone a gradual but considerable change; and it may be assumed that if matters were to start *de novo* the justices would not grant as many licences as there are now existing. The difficulty has thus arisen partly from a change in public opinion as to what is an excessive number of licensed houses. But it may then be urged, "Why, as soon as the number of licensed houses, from whatever cause, became excessive did not the justices refuse to renew more licences than were reasonably required? And, in fact, was it not their duty to administer the law in that manner?" It is difficult to say that it was, and it is still more difficult to say that it was reasonably possible for them, as practical men, to do so; for this could not be carried out without special hardship to individuals. If there be two licensed houses,

both respectably conducted, when only one, in the opinion of the justices, is required, which licence should the justices refuse to renew? Both licensees have invested their capital and paid a large sum of money for the licence. Why should A. lose his capital and B. not? To suddenly refuse to renew A.'s licence, because the justices are of opinion that B.'s house alone is sufficient to supply the needs of the neighbourhood would be an act of the grossest hardship on A. If any definite meaning can be applied to the word "justice," it certainly imports equality of treatment in similar cases. Here the cases of A. and B. are exactly similar. To deprive A. of his licence and renew B.'s would be manifestly unjust. This is the special difficulty which confronts the justices in administering the law.

SECTION IV.

PRECEDENTS (*a*) FOR COMPENSATION.

How far the question whether compensation has or has not been given in other countries affects the question whether compensation should be given in England will be considered later. But as in discussions upon proposed political measures it is not unusual to refer to the practice of other countries in the matter, it is necessary to consider what legislation there has been with reference to the particular question of compensation in other countries. To make any such information useful it is further necessary to consider how far the circumstances which existed at the date of any such legislation are similar to those now existing in England. To ascertain this at all completely is a task of great difficulty, and the following statement aims at broad generalisations which are in the main true and does not profess to give a detailed and full examination of all the facts.

(1) SOUTH AUSTRALIA.

The colony of South Australia, by an Act called "The Licensed Victuallers Amendment Act, 1891 (54 & 55 Vict. No. 540)," introduced a scheme of local option with compensation for dispossessed publicans. Part IV. of the Act deals with the suppression of licences. The critical sections are:—

"15. If the determination of the ratepayers of any Local Option District at any poll taken as aforesaid in any year be that the number of publicans' licences shall be reduced to any number below the existing number, then the Licensing Bench having jurisdiction in such Local Option District shall, in the month of March next ensuing, determine, as hereinafter provided, which of such publicans' licences shall not be renewed, and at the next annual sitting of such Bench the total number of such publicans' licences shall be reduced by the number required to carry out the determination arrived at; the owners and occupiers of the respective premises, publicans' licences for which are not to be renewed, shall be forthwith served with a notice to that effect by the clerk of the Licensing Bench, and such owners and occupiers shall be entitled to compensation, to be determined as hereinafter provided; and where the occupier is not the owner of any such premises the lease or agreement under which such occupier holds the same shall, if he shall so elect, be deemed to be annulled: Provided that no person shall be deprived of a publican's licence in pursuance of

any such determination unless and until he has received the compensation (if any) due to him in respect thereof under this Act, or the same has been tendered to him; and the Bench, in determining which of such licences shall not be renewed, shall consider the convenience of travellers, the site, and convenience of the majority of residents near such licensed premises, the length of time for which such premises were licensed, and the general character thereof, and the circumstances of any transfer of licence during the preceding three years."

The amount of compensation is determined by arbitration; the basis for its calculation is given by section 22 of the Act, which runs:—

"The compensation to be paid under this Act, on the refusal of the Bench to renew any licence, in consequence of the result of the poll prescribed by this Act, shall be calculated on the following basis, and not otherwise, viz.: The difference between the rental value of the premises as a licensed house and as an unlicensed house, from the time of the non-renewal of such licence until the period of fifteen years from the passing hereof. Should the holder of the freehold of the licensed premises and the licensee be different persons, or should the lessee and the licensee be different persons, or should there be more than one lease subsisting of the said premises, or should the premises be mortgaged, or should there be any lien thereon, the said compensation shall be divided between all the persons interested in such proportions and manner as the said arbitrators, or a majority of them may determine."

The scheme then in substance is that compensation (which is paid out of the Treasury) is given at the rate of fifteen years' purchase, and that fifteen years from the passing of the Act no person is to have any claim to compensation. Whether this fifteen years' purchase was chosen as the fair average market rate or not cannot be said. The clauses relating to compensation in the original Bill[1] are somewhat obscure, and there is no clause in the Bill corresponding to section 10 of the Act, which enacts that—

"All licences now existing shall, after fifteen years from the passing hereof, not be renewed as a matter of course, but the same shall thereafter be renewed or not at the discretion of the Licensing Bench; and any licence granted after the passing hereof for premises not previously licensed shall be for one year only, and shall be renewed or not, entirely at the discretion of the Licensing Bench, and no such renewal shall be held to be a matter of course."

On the face of it the South Australian scheme is one for giving full compensation and the basis of calculation is given as a simple and ready means for determining

[1] This is given in C. 6,276 (1891), p. 50.

this. In fact, the local option clauses do not appear to have been utilised very much. On 31st October, 1893, the Commissioner of Police reports that the local option clauses have not resulted in the closing of any public-houses.[1]

(2) VICTORIA.

The Licensing Act, 1890, of the Colony of Victoria (54 Vict. No. 1,111) contains provisions for local option and for compensation to dispossessed licence-holders. The compensation is to be determined by arbitration; but the only hint of what the compensation is to be is contained in section 44 (relating to arbitration) which enacts that "the amount of compensation shall be determined by the arbitrators on a fair and equitable basis." Presumably this means that the compensation shall be at the full market value; for if it does not it is curious that the fact that the compensation is to be partial or limited is not expressly stated; but the amount must depend upon the actual practice of arbitrators, and it is

[1] C. 7,415 (1894), p. 20.

difficult to get detailed information of that. In "The Temperance Problem and Social Reform (1900)," at p. 351, it is stated that—

"Reduction has so far been effected in eleven districts, resulting in the closing of 173 saloons at an average cost by way of compensation of £800. The compensation clauses of the Act are, however, so obnoxious to the Temperance party in Victoria that no organised effort is now made to use the Act for the purposes of reduction."

The fund for compensation is raised out of the trade itself.

(3) SCANDINAVIA.

In Norway, by the law of the 1st May, 1880, relating to the redemption of brandy licences, the council and representatives of a town might redeem certain licences in which the licence-holders were supposed to have strong vested interests. These were licences granted before the publication of the law of 6th September, 1845. The compensation to which the licensee is entitled is to be fixed according to an estimate made by four men.[1] The compensation is "fixed

[1] Sect. 2.

at a certain annual sum, corresponding as a rule to the average income which the licensee is understood to have derived from his business done as licensee during the three years previous."[1] It is difficult to say what this section (as thus translated) precisely means; but the true construction is probably that a life annuity equal to average profit was given to the holders of privileged licences. This, at any rate, was done in Christiania.[2] In Bergen no compensation appears to have been given; but the interval between 3rd May, 1871 (the date of the Act admitting a company to compete with the existing licence-holders), and the 1st January, 1877, when these licences ceased, may be deemed a period of grace.[3] In Stockholm there were a large number of permanent licences mostly founded upon burgess rights; most of them were bought up by private agreement.

To speak broadly, in Scandinavia there

[1] Sect. 3.

[2] "The Gothenburg System of Liquor Traffic," by E. R. L. Gould, p. 184.

[3] *Ibid.*, p. 167.

appears to have been a considerable distinction between the permanent and non-permanent licences, and the former were compensated; the latter not. Probably, in the case of the latter, the expectation of renewal could not be put very high.

(4) RUSSIA.

Recently in Russia a Government spirit monopoly has been introduced. "The Temperance Problem and Social Reform" contains the following account:—

"No compensation has been given to the dispossessed keepers of spirit shops. An extract from a semi-official publication may be quoted: 'In Russia, there can be no question of giving compensation to evicted retailers of spirits. The licence they were granted by which they were permitted to carry on their deplorable business has always been considered by the legislator, the administration, the public, and by themselves as a permission liable to be withdrawn without explanation or comment.'[1] It is, however, stated that the question of granting assistance in certain cases to the above-mentioned individuals is under consideration. In the case, however, of Poland, some of the Western Provinces, and the Baltic Provinces, very ancient vested rights existed belonging to both private persons and public bodies. Landed proprietors

[1] Quoted in Foreign Office Report (Miscellaneous Series), No. 465, 1898.

and towns had the right of distilling, and keeping drink shops, both of which proved a source of considerable income. It was found impossible to extinguish these rights, called "propination," without some compensation. Accordingly, all those who have enjoyed the privileges of "propination" have been called on to furnish returns to the Government showing their annual income from this source for the five years, 1890—1894; an average is taken, and this sum, multiplied by twenty, has been or will be paid to them as a final settlement of their claims for the loss of their rights." [1]

PRECEDENTS (*b*) AGAINST COMPENSATION.

The cases in which there has been a reduction of the number of licences under Local Option or complete Prohibition without compensation are, on paper at any rate, extremely numerous.

(1) THE UNITED STATES OF AMERICA.

Among the United States of America we have five [2] where there is Prohibition, and in most States there is Local Option in

[1] On the Russian spirit monopoly see an article by A. Raffalovitch in the "Journal of the Statistical Society," March, 1901.

[2] Maine, Kansas, New Hampshire, Vermont, North Dakota.

one form or another. Compensation is not given to those who lose their licences.

But it must not be assumed from this that the question of compensation has not been raised. In 1887, when it was proposed to add prohibitory amendments to the State Constitutions of Pennsylvania, Nebraska and Illinois, compensation clauses were suggested but withdrawn; in the case of *State of Kansas, Ex rel.* v. *John Walruff*, it was held by Judge Brewer that prohibition, if unaccompanied by provisions for compensating the owners of existing liquor property would not be in accordance with "due process of law."[1] The Supreme Court however in several decisions[2] has exploded the doctrine that prohibition without compensation is illegal; and several States have enacted that liquor selling is a common nuisance.

The prohibition laws, so far as they affect towns, are in general not enforced.

[1] "No person shall be deprived of life or property without due process of law, nor shall private property be taken for public use without just compensation" (U. S. Constitution, Art. 5, Amendment).

[2] *Mugler* v. *Kansas, Kansas* v. *Ziebold*, 123 U. S. 623.

In fact, it is generally recognised that if they were enforced, public sentiment would insist upon their being repealed. For this reason no precedent or analogy which could possibly prove serviceable can be drawn from the legislation in the United States. American politics are not English politics. To argue from the case of a nation whose legislatures enact laws which are not intended to be enforced to the case of this country would be fruitless. In addition to this, the practical certainty of renewal of a justices' licence which exists in England is absent from a country in which the spoils system is an article of political faith. In short, the Americans are so fundamentally different from the English in habits and temperament, that it is misleading to look to their legislation for the purpose of inferring the probable form which legislation may take in this country.

(2) CANADA.

The English self-governing Colonies have made many experiments in Local Option and

Prohibition. In Canada the results of the working of the Canada Temperance Act, 1878,[1] up to the year 1891, may be found in the Parliamentary Paper [C. 6,670] of 1892, and later information in "The Temperance Problem and Social Reform." Compensation is in general not given. In Quebec "No compensation was made or proposed to be made in those counties in which 'The Canada Temperance Act' was adopted to the parties, who by such vote were deprived of their licences, but in no case was the said Act brought into operation until the expiration of the existing licence."[2] It is difficult to know what this means, but it is clear that no money compensation was given.

In Nova Scotia, New Brunswick, Manitoba and Prince Edward Island, no compensation was paid when the drink shops were closed under The Canada Temperance Act.[3] In British Columbia the Act appears never to have been adopted. Canada is a country in which surprisingly little alcohol is drunk,

[1] 41 Vict. c. 16, No. 106 in Revised Statutes of 1886.
[2] C. 6,670, p. 4.
[3] See Parliamentary Paper 421 of 1888.

and in which the temperance sentiment is strong. In the towns prohibitory laws are not always strictly enforced. The oscillations in the voting power of the parties for and against prohibition must make and have made for a long time past the position of a licence-holder extremely precarious, and the degree of disappointment felt by a licence-holder on the adoption of some form of prohibition is tempered by the two facts that he must have contemplated the strong probability of a temperance majority, and that in all probability the law will not be enforced.

(3) NEW ZEALAND.

In New Zealand there is local option and no compensation. As a result in one rural district there is prohibition, and in a few the number of licences have been reduced.

(4) AUSTRALIA.

The Australian Colonies (with the exception of Tasmania) usually have some form of local option, which, however, very rarely leads to prohibition, and rarely to any

reduction in the number of licences. The two colonies, Victoria and South Australia, in which compensation is given, have already been referred to; in the others compensation is not given.

SUMMARY.

To sum up the results of the section, it may be said that in North America we have strong temperance legislation (and sentiment) leading to uncertainty in the position of the licence-holder. His expectation of renewal is therefore small; he is not compensated, but as a set-off the law is usually not strictly enforced.

In Australia a less strict temperance legislation and sentiment leads to some uncertainty in the position of the licence-holder. His expectation of renewal is therefore a reasonable one, and in some cases he is compensated.

In England, on the other hand, the two most recent general elections indicate the weakness of the temperance sentiment; no proposed legislation in the nature of prohibition and reduction without compensation

appears to have any chance of success, and the expectation of renewal of a licence is a practical certainty. The conclusion is that the analogy fails.

SECTION V.

PROPOSALS FOR COMPENSATION IN ENGLAND.

MANY attempts have been made to legislate in favour of the reduction of the number of licensed houses, and in many of these provisions are made for compensating or giving some notice to the publicans. The extreme temperance party in England are opposed to compensation of every sort or kind; but the more moderate advocates of reform in our present licensing system generally make provision for some sort of compensation. A statement of a few of the most important proposals illustrates the variety of opinion which has existed as to the amount of compensation due. This diversity of opinion is not in all ways so significant as it appears, because the length of the time notice or the amount of compensation is often treated as a detail. And it must be borne in mind that all the proposals

now described have either been rejected by Parliament or have not yet reached the stage of being introduced into Parliament; still, they cannot be passed by in silence.

(1) MR. BRUCE'S SCHEME, 1871.

One of the most important attempts to reform the licensing laws is contained in Mr. Bruce's Bill for regulating the sale of Intoxicating Liquors (No. 104 of 1871). The Bill did not offer any money compensation to persons dispossessed of their licences, but made the existing licences continue for ten years certain and then cease. The Bill is a most elaborate scheme for licensing reform, and to state the general effect of it would be outside the scope of this inquiry. Clauses 9 and 41 are alone important in this context. By clause 9:—

"Every publican's certificate of whatever description, and whether a new certificate be granted as hereinafter provided to holders of licences existing at the commencement of this Act, shall be continued annually, as hereinafter mentioned, until the general annual licensing sessions which is held next after the expiration of ten years from the commencement of this Act, and shall absolutely determine at the end of such sessions."

And by clause 41 :—

"At the general annual licensing sessions which are held next after the expiration of ten years after the commencement of this Act, and of every subsequent period of ten years, no publican's certificate shall be continued, . . ."

It is hard to find out what the probability of renewal was in 1871 ; the scheme provides for confiscation of a reversionary interest ten years off with no money compensation.

It is a matter of great regret that Mr. Bruce's scheme, or some modification of it, was not accepted. Had it been the present difficulty would not exist. The fact that it was so unsympathetically received indicates how difficult it is to prepare any scheme which has any likelihood of success.

(2) MR. RITCHIE'S SCHEME, 1888.

In 1888, by the Local Government (England and Wales) Bill, 1888 (No. 182),[1] it was proposed to transfer to the county councils the licensing powers in respect of intoxicating liquors. By clause 11 the county council were given absolute discretion to "grant the renewal of the licence or refuse

[1] Clause 10.

the same, whether with a view to diminish the number of licensed premises in the division or with any other object whatever, subject, nevertheless, to such confirmation by the county council and to such compensation as is provided in this Act." The compensation is provided by clause 13 :—

"(2) If the refusal of the renewal of a licence under this section is confirmed by the county council and the licence was applied for by way of renewal of a licence granted before the passing of this Act the council shall pay in respect of the injury caused by the loss of the licence, compensation to such amount as in default of agreement between the County Council and the person claiming it, may be determined by an arbitrator. . . . (3) In determining the amount of compensation regard shall be had in case of a licence to which the Beer Dealers Retail Licences (Amendment) Act, 1882,[1] applies to the discretion of the justices before the passing of this Act to refuse the renewal of the licence, but subject to that consideration, if applicable, the compensation shall be assessed on the basis of the difference (if any) between the value of the licensed premises immediately before the passing of this Act, and the value which such premises would have then borne if the licence had then determined."

By the Act of 1882, referred to :—

"Notwithstanding anything in section 8 of the Wine and Beerhouse Act, 1869, or in any other Act now in

[1] 45 & 46 Vict. c. 34.

force, the licensing justices shall be at liberty, in their free and unqualified discretion, either to refuse a certificate for any licence for sale of beer by retail to be consumed off the premises on any grounds appearing to them sufficient, or to grant the same to any such person as they in the execution of their statutory powers and in the exercise of their discretion deem fit and proper."[1]

(3) MR. GOSCHEN'S SCHEME, 1890.

In 1890, by the Local Taxation (Customs and Excise) Duties Bill of that year (No. 244) it was proposed to be enacted by clause 1 (ii.) that the sum of £350,000 shall be applied for such extinction of licences in England, as hereinafter mentioned, and by clause 6 (i.)

"A county council may, either on the application of any urban or rural sanitary authority of any district wholly or partly within their county, or without such application, enter into such agreement with persons having any interest in premises within their county, in respect of which an on-licence has been granted, as may be requisite, with a view to such premises ceasing to be used for the sale of intoxicating liquor, and may make payments in pursuance of such agreement."

And by clause 9 it was provided that the effect of the Act was not to be to increase the

[1] Sect. 1.

value of a licence. This scheme recognised the right of the licence-holder to full compensation, and was defeated partly by the extreme temperance party, who are opposed to all compensation, partly by the argument (urged with great force by Mr. Gladstone in his speech in the House of Commons of 15th May, 1890)[1] that the effect of this would be to increase the value of the remaining licences. This argument is a very powerful one, and materially contributed to the rejection of the scheme.

(4) THE BISHOP OF CHESTER'S SCHEME, 1893.

The Authorised Companies (Liquor) Bill, introduced into the House of Lords in 1893, by the Lord Bishop of Chester, by clause 3 enacts that :—

"(1) On the establishment of an authorised company under this Act in any district a new Licence save as in this Act provided, shall not be granted in that district except to the company.

"(2) After the expiration of five years from the date of the establishment of an authorised company in any district any licence not held by the company shall not, save as in

[1] 344 Hansard.

this Act provided, be renewed, and shall expire at the close of the period for which it was granted."

No compensation is given at the end of the five-year period.

(5) SCOTTISH THREEFOLD OPTION.

In Scotland the Scottish Threefold Option Alliance in their draft Bill for Temperance Reform, after providing for a Temperance Reform Fund derived from licence rents and licence fees and the surplus profits of any company sanctioned under the Act, or of the licensing authority (if it undertakes the local management of the drink traffic itself), provides that the local authority may adopt either of the following methods of settling all claims that may arise on the compulsory closing of licensed houses without fault on the part of the owner or licensee, namely:—

(*a*) "The Licensing Authority may give a Time Notice of three years, to date from the next Annual Licensing Court subsequent to the Poll with certification that—provided the Licence is not cancelled by default before the expiry of said period of years—it may be renewed from year to year if otherwise deemed meet and convenient,

but that at the close of the said period it shall lapse and shall not be renewed, and that without any Claim, or supposed Claim, for compensation to any party arising thereon; or

(*b*) "The Licensing Authority may pay a sum of money out of the aforesaid Temperance Reform Fund, by way of Settlement, which shall be accepted as meeting all claims or supposed claims; and which shall not exceed as respects the Owner of the House a sum equivalent to two years of the Licence Rent calculated as aforesaid; and as respects the holder of the licence, shall not exceed a sum equivalent to two years of the clear Profit of the business, as that shall be proved by him, and certified to the satisfaction of the Licensing Authority, by an independent Audit on the basis of the two years immediately preceding the taking of the Poll, or such portion of the two years as he may have carried on the business;—under Proviso, that the Money Settlement shall only be agreed to, as regards either party if the Licence is voluntarily surrendered on these terms at some date not later than twelve months after the declaration of the aforesaid Poll;—it being hereby declared and enacted that no claim for compensation in any form can arise with regard to the refusal to renew any Licence which has been issued after the Act came into force."

It is stated that the exact figures are details; but it is sufficiently clear that the Alliance do not contemplate giving a long notice or a substantial measure of compensation. Further, the compensation is to be derived from the trade.

(6) LORD PEEL'S SCHEME.

Chapter II. of Part V. of the Minority Report of the Royal Commission on Liquor Licensing Laws contains a scheme for the reduction of Licences and Compensation. The compensation proposed is extremely partial and limited, so much so that the word "compensation" appears out of place, and the euphemisms of "consideration" and "solatium" which have already been mentioned would be more appropriate. In substance the recommendation is that after seven years from the passing of the Act for reduction and compensation, the licensee should strictly be considered as entitled to no compensation for the loss of his licence and that meanwhile the maximum of compensation paid should be seven times the rateable value of the premises.

"We recommend the adoption for England and Wales of a term of, say, seven years, as the basis of a time notice and compensation arrangement, under which the number of publicans' and beer 'on' licences should be everywhere reduced to the statutory maximum.

It might be left to the discretion of the licensing authority to make the reduction all at once, at the commencement of the seven years' period, or to spread it over

the period by withdrawing one-seventh of the surplus licences each year. In the latter case, the compensation to be paid for the licences withdrawn at the first licensing meeting would be an amount not exceeding seven times the rateable value of the premises. For those withdrawn the second year the compensation would be six times the rateable value. For those withdrawn the third year it would be five times the rateable value, and so on." [1]

The rateable value of a public-house is not a correct measure of the value of the licence and goodwill of the premises.[2] Why seven years is chosen does not appear; nor is it clear what proportion of the total loss would be compensated for in this case; but it would seem to be about one-third. Three considerations are offered for supposing that the loss which must inevitably fall upon those interested in licensed houses will be greatly mitigated, and they illustrate the confusion of mind of Lord Peel and

[1] P. 268.

[2] On the rating of licensed premises, see *Dodds* v. *The Assessment Committee of South Shields* (1895), 2 Q. B. 133; *The Assessment Committee of the Bradford-on-Avon Union* v. *White* (1898), 2 Q. B. 630; *Cartwright* v. *Guardians of the Poor of Sculcoates Union* (1900), A. C. 150; and an article by W. Ryde in the *Estates Gazette*, 20th April, 1901.

his colleagues. The first is that "though the licence is taken away the property will remain. Public-houses, especially in town, very often occupy corner sites and other very advantageous positions, which will be of great value for other purposes. This value is now included in the market price of the licensed house."[1] Now the loss of property is the loss of the licence and the goodwill which is bound up with it. The difference between the market value of the premises unlicensed and the premises licensed is *primâ facie* at any rate the measure of the total loss. The mere fact that the property which is not taken is valuable only mitigates the hardship in the sense that a rich person can afford a loss more easily than a poor one; but in the case where the brewer has a first mortgage and the distiller a second, these mortgage debts will probably absorb the whole value of the corner site, and the dispossessed licence-holder is to be consoled by the fact that someone else is rich though he may not be. The second consideration is that "if, as often happens, the

[1] P. 268.

owner of the premises owns also adjoining property, this will be appreciated in value by the abolition of the licence;"[1] which is a consideration of no value if the owner of the premises does not own the adjoining property. The third, that "under the prevalence of the tied-house system the loss will be spread and brewing companies holding leases of or mortgages upon the licensed houses will partially recoup themselves in some places for the loss of trade in others" is of greater value; but in so far as a diminution of the number of public-houses leads to a diminution of the amount of beer drunk, it will not have much weight.

In fact, then, this is a scheme of limited or partial compensation in which the amount of compensation is not connected with the amount of loss. No reason is given why the compensation should be arbitrary; but the reasons why the compensation should not be full are thus stated at page 265 of the report:—

"Advocates of the licensed trade claim that in the case of any licence being taken away because it is not required,

[1] P. 269.

compensation should be paid of the full price which the licensed house would or has fetched in the market. Such a claim cannot be for one moment entertained. Even if there was a vested interest in the licence it would not be fair to claim more than the market value of the house less its value unlicensed. More than this, the market value is often very far from being a reasonable one. The great competition among brewers and their eagerness to secure outlets for the sale of their beer, which under a system of free competition, would probably be driven out of the market by the products of a few of the highest class brewers, has led them to invest large sums in the purchase of licensed houses at absurdly inflated prices. To claim full compensation on market values is to ask the legislature to step in and save them from the ill-consequences of their own rashness. But the truth is the exact contrary to the assumption of a vested interest in a public-house licence. It cannot be too clearly laid down that the licence lasts for one year and no longer. The decision of the House of Lords in *Sharp* v. *Wakefield*, strengthened and confirmed by that in the recent Dover case, *Boulter* v. *Kent JJ.*, leaves no room for doubt upon the subject. There is by law no property in a licence. It cannot be bequeathed. Even when a licence-holder dies, or becomes bankrupt, it does not vest in his legal representatives or trustee in bankruptcy, but has to be formally transferred to them. It is useless to argue that when a licensed house is compulsorily acquired for public improvement under the Lands Clauses Consolidation Acts full compensation on the basis of market value is given. There are at least two important differences in this case: First, the licensed house is taken bodily and not the licence only. Secondly,

the municipality or other public body acquiring the house have no power by statute or common law to abolish the licence, as has the licensing authority. Nor does the Inland Revenue, in taking the market value as the basis of calculation for the purpose of death duties, give any kind of guarantee as to the correctness or permanence of that valuation. While Mr. Candy himself admits that no question of compensation can arise in case of a licence withdrawn in ordinary legal course, it is argued that the spirit of the law does not contemplate any wholesale withdrawal of licences. But it is clearly the spirit of the law that only such a number of licences shall be granted as shall be sufficient for the requirements of the neighbourhood. Looked at from another point of view, the right to compensation appears equally unfounded. The licensing justices at present, have a perfect legal right to enormously diminish the value of a licensed house by licensing the house next door. They could even grant a licence to every person who applied. Mr. Down, a brewer, declares that such free licensing would be a great wrong to existing interests; yet it has been actually tried at Liverpool, in the Prescot division of Lancashire, and elsewhere; but there could be no possible claim for compensation any more than when Parliament has chosen to restrict the hours of opening. The only possible conclusion is that the claim to compensation rests on no legal foundation whatever. But while from the point of view of strict justice no claim to compensation can be urged, there are other considerations which make it desirable that some amount of compensation should be given."

The discussion of these arguments will be reserved till a later stage.

(7) ROYAL COMMISSION SCHEME.

The Report of the Majority of the Members of the Royal Commission on Liquor Licensing Laws provides for the payment of compensation to those interested in the suppressed licences, based on a declared value. They suggest that—

"Every owner and occupier of licensed premises should be required jointly to declare the separate value of the premises, and also of the licence and goodwill attached to them. It may be objected that the owner who expected his licence to be suppressed would value high and *vice versâ*, and this is a real danger, but might be provided against by the following check: the licensing authority might have the option of taking the declaratory value, or, if they were dissatisfied with it, of resorting to the machinery of the Lands Clauses Consolidation Act."[1]

The Compensation Fund is to be derived from taxation upon the basis of the declared value.[2]

This scheme, then, provides for full compensation for the suppression of a licence for the general good; but provides that the source of compensation should be the trade and the consumers of liquor.

[1] P. 52. [2] P. 53.

SUMMARY.

Sir W. Harcourt's Local Option Bill in 1894 did not provide for any compensation, but the result of the general election following it appears to indicate that the electorate disapproved of it. These different proposals show that in general it is thought advisable to give some compensation, and sometimes to give full compensation. But it cannot be inferred that there is much probability of getting a consensus of opinion in favour of a particular limited amount of compensation. It is difficult to determine what grounds there can be for giving partial compensation whenever the principle of compensation is admitted. It may be that it is thought that special and particular hardship is caused if there is no compensation, and that then a limited compensation is desirable as a matter of grace and expediency. This is the opinion of the minority of the Royal Commission on the Liquor Licensing Laws, and is justified on the ground that, "Until recently the opinion was very generally held that there was by law a vested interest in a

licence, and this belief was very much encouraged by the usual practice of the licensing justices in granting renewals without question year after year." The meaning (or want of meaning) of the term "vested interest by law" has already, it is hoped, been made clear. If the argument in substance is that there is, or was till recently, a great probability of renewal, the market value test will determine that probability. The confusion which the phrase "vested rights" causes is very persistent. Whether any good ground can be suggested for limiting the amount of compensation to less than the market value, as was proposed in so many of the schemes just mentioned, will be considered in the 6th section.

OPINIONS.

The opinions of English statesmen are normally in favour of compensation whenever private rights or property have to be acquired or destroyed for the public good. This is also the case in the particular instance of property in a licence, except in so far as by giving compensation the

legislature would seem to admit that a licence was a permanent and not an annual privilege. At any rate, most of the attacks on proposals to compensate publicans have proceeded either on the ground that the proposed compensation was too great or that the proposed compensation would create a legitimate demand for further compensation. The extreme advocates of temperance reform are opposed to compensation. They think all traffic in liquor unholy, and would have no mercy on those interested in it; but such views do not seem to commend themselves to statesmen of the first rank, or to more than a very small section of the electorate. To quote an array of opinions of statesmen would be tedious and useless. But two opinions will be quoted, the one on account of the eminence of the man who uttered it, the other on account of the vigour with which it is expressed.

MR. GLADSTONE.

Mr. Gladstone, speaking on Local Option in the House of Commons, said :—

"I should have been better pleased with the matter of the resolution if my honourable friend (Sir W. Lawson)

had included in it some reference to the principle of equitable compensation. I want nothing more than that —a frank recognition of the principle that we are not to deny to publicans as a class a perfectly equal treatment because we think that this trade is, at so many points, in contact with, and even productive of, great public mischief. Considering the legislative title they have acquired and the recognition of their position in the proceedings of this House for a long series of years, they ought not to be put at a disadvantage on account of the particular impression we may entertain, in many cases but too justly, in relation to the mischief connected with the present licensing system and the consumption of strong liquors."[1]

MR. CHAMBERLAIN.

Mr. Chamberlain goes further, and even appears to think that the fact that the publicans are a nuisance would, judging from precedent, give rise to a legitimate claim on their part :—

"Another objection to Sir Wilfrid Lawson's Bill is that it makes no provision for compensating those whose existing means of livelihood it proposes to destroy. It is not likely that the general feeling of the country will ever accept such a proposal as equitable and right. We have compensated every conceivable interest in this country whenever the well-being of the community has necessitated interference. We compensated proctors for abandoning their privilege of delay in legal procedure :

[1] 18 June, 1880, 253 Hansard, p. 363.

we compensated the officers of the army for surrendering the admittedly illegal system of purchase: we compensated the Rev. Thomas Thurlow to the tune of nearly £450,000 for the loss of his sinecures as Prothonotary and Hamper Keeper: we compensated the Deputy Chaff-Wax when we relieved him from his absurd and useless functions: we are actually at this day compensating the heirs of a man who died two hundred years ago, for his losses in the service of the most profligate monarch our country has ever known. What have the publicans done that they are to be ruthlessly excluded from all participation in the golden shower which descends in this country on the heads of all who contrive to make themselves a nuisance to the community, or to block the way to further progress? Their case is the more entitled to consideration because they may plausibly urge that they have been tempted into the trade by past legislation, while many of them can show that they have bought with hard cash their share of that monopoly, licensed by the State, of which it is now proposed to deprive them."[1]

PROFESSOR H. SIDGWICK.

One more expression of opinion will be quoted, namely, that of Henry Sidgwick. He writes:—

"A case which seems to deserve special consideration occurs where commercial advantages have been *practically* conferred on private traders by the action of Government, without being *legally* secured to the persons who enjoy the advantages. The value of the

[1] *Fortnightly Review*, May, 1876.

goodwill of public-houses in England under the present system of licenses is largely derived from this source; and in discussing the compensation due to the owner of any such public-house we have to distinguish between the extra element of value given by the limitation of competition that results from the licensing system, and what would have been the value of the business if no such limitation had existed. Of course an exact separation between the two elements is practically impossible; but theoretically they stand in quite different relations to a claim for compensation. For the latter element I consider that compensation is clearly due on the principle, and with the qualification explained in the preceding section, since the view that alcohol selling is to be treated as altogether mischievous—like slave selling—appears to me fanatical. But I can see no legitimacy in a claim to be compensated for the additional element of value due to the governmental limitation of competition, if no guarantee of the permanence of this limitation was given by Government when the system was instituted."[1]

The student who wishes more instances of the opinions of statesmen on this question of compensation, and on the case of Slavery, Army Purchase and the Irish Church Act, will find many extracts in Mr. Cagney's pamphlet[2] entitled "Compensation"; the

[1] "Politics," p. 190. The modern practice has been to increase the limitation, but of course without any guarantee that the limitation will be permanent.

[2] This is a powerful statement of the publicans' case for compensation, and is worthy of attention.

discussions in the House of Commons on Mr. Bruce's scheme, and the schemes of 1888 and 1890, mentioned above, which are to be found in Hansard, are instructive, but need not be quoted here.

SECTION VI.

The preceding enquiry has cleared the ground for the answer to our problem. If the legislature decides to suppress a large number of licences for the public good, ought the licence-holders to be compensated? And if so, on what basis should the compensation be determined? The political commonplace that vested interests should be compensated is a mere application of the non-disappointment principle, a principle which holds that it is inequitable and inexpedient to disturb fixed and reasonable expectations, especially when large amounts of capital have been invested in reliance on such expectations. An examination of precedents chiefly leads to the conclusion that no general rules other than this can be laid down, it also indicates that the mere fact that the rights or interests compensated are *mala in se* or *mala prohibita* is not sufficient to debar the claim to compensation, though

it may possibly affect the amount. In the special case an examination of the position of licence-holders leads to the conclusion—(1) That the legislature and the Courts of Law contemplate renewal as the normal course of events; (2) That this expectation of renewal is at the present time a practical certainty; (3) That the amount of capital invested on the strength of this expectation is very large and distributed widely throughout the community. There is therefore a very strong *primâ facie* case for compensation. An examination of the precedents to be derived from the United States of America and the English Colonies at first sight leads to the conclusion that amongst English-speaking people compensation for the loss of a licence is but rarely given, but a closer inspection of the facts shows that the essential feature of the present case—that of the strong expectation of renewal recognised by the Law Courts, the Government Offices, the Estate Markets and the General Public—is usually absent elsewhere.

At any rate, without a more detailed investigation of the facts, such as could

properly only be carried out by an expert on the spot, it is not safe to draw conclusions from the cases of North America and Australasia. An examination of some of the more important and recent proposals for the reduction of licences in England shows that either full compensation is proposed, as by the Majority Report of the Royal Commission on the Liquor Licensing Laws, and Mr. Goschen's scheme in 1890, or partial compensation, as by the Minority Report and the Scottish threefold option scheme, or a time notice is given, so as to minimise to a greater or less extent, according to the length of the time, the amount of disappointment felt. It is generally thought that suddenly to sweep away a large number of licences without any compensation would not only inflict great hardship upon individuals for no fault of their own, but also cause a harmful disturbance in the economic equilibrium and produce a feeling of uncertainty and insecurity which would militate against the interests of trade and commerce generally. The opinions of responsible statesmen are strongly in favour of compensating vested interests; few cases of vested

interests are clearer than this one. The *onus* then is on those who allege that there is no ground for compensation.

DISCUSSION OF LORD PEEL'S ARGUMENTS.

To see how far they discharge this *onus* the arguments contained in Lord Peel's Report quoted above[1] will now be considered. They represent the most recent and serious statement of the temperance case against compensation. The first point as to the market value will be considered later; it only affects the amount of compensation. The second point is that there is no vested interest in a licence. This view is based upon a misunderstanding of the meaning of the phrase "vested interest." It would appear that the framers of the Minority Report had not paid sufficient attention to the meaning of the phrase, and that the opinions so clearly expressed by Austin and Bentham were not present to their minds. It is greatly to be regretted that gentlemen of such eminence should have fallen into such a common error, and one which they could have avoided

[1] *Ante*, p. 95.

by careful consideration. It may be that their report was prepared hastily.[1] The fact that there is by law no property in a licence does not settle the question. Expectations and customary rights not recognised by law are continually being compensated; this expectation is recognised by law. The other points have been incidentally discussed before. The conclusion that the claim to compensation rests on no *legal* foundation whatever does not afford an argument against compensation. It is all part of the unfortunate confusion of expression which the draftsman of the Minority Report has so often adopted.

An Act of Parliament can override and abolish rights without giving compensation. A claim to compensation as against the State could not possibly have any legal foundation. These arguments, then, do not rebut the presumption in favour of compensation.

An objection to the proposals of Lord Peel

[1] For the circumstances which gave rise to this report, see Sir Algernon West's article in the *Nineteenth Century*, February, 1900.

may be noticed here. There is no equality of treatment between the publicans who lose their licences and receive partial compensation, and those who do not lose their licences. It is unjust that some persons should be favoured and others not. In so far as the publican loses his licence for no fault of his own, but to suit the temper of the times, it is desirable that, so far as he is not compensated, the loss should be distributed amongst all publicans. The injustice of this and some of the other schemes referred to above is likely to prevent them from being acceptable. Whether or not full compensation is just and equitable, it is clear that equality of treatment is necessary.

WHY NOT GIVE FULL COMPENSATION?

Assuming that compensation is to be given, why should it not be full compensation, that is "something equivalent" in Dr. Johnson's phrase? The difference in the market value between the premises as licensed or unlicensed is the natural test of the value of the licence which is to be taken away. It is alleged that the market value of licensed

premises is often very far from being a reasonable one. But, after all, what is the test of reasonableness of value except the market value if there is fair competition and no undue restriction, by combination or otherwise, of supply and demand? That the value of a licence is often very high, sometimes £10,000 or £12,000, affords a very good reason why a licence should not be granted gratis to an individual; but the fact that a man has paid £10,000 for a licence and could sell it to-morrow for that sum is no ground for saying that he has paid too high a price. If the recent prices paid are too high, they will fall through the operation of the higgling of the market. Except in special circumstances there is no ground for refusing to take market price as a true measure of value in exchange. But the fact that there has been such an increase in the value of licences in the last few years has led persons to suppose that the prices are "absurdly inflated." Special prices may be; if so, they will fall; but the general rise has probably been due to causes which have affected the property itself. Before the War

the excessive accumulation of capital had led to a fall in the rate of interest and profits, and a corresponding rise in the value of securities. There has been great competition amongst brewers and others to get licensed houses. There has been a fall in the rates of profit on their capital invested. Brewery Companies could borrow millions in debentures at a low rate of interest, and hence could afford to pay a higher price than before for licensed houses in order to extend or protect their trade. If a more intimate special investigation should prove that the market prices were specially inflated and would probably fall in the near future, it might be said that the values were speculative and other than real, but, until evidence of this is forthcoming, it is not well to refuse to take market value as the fair test of value in an ordinary case. Incidentally the high value furnishes an additional proof of how strong the expectancy of renewal is.

Up to this point the argument has pointed to the conclusion that if the legislature decides suddenly to take away a large number of licences the licence-holders should

receive by way of compensation the market value of these licences, but the effect of this restriction of the number of licensed premises upon the remaining licensed premises must not be forgotten. The high values paid for licences show that the absence of competition of adjoining houses may be an important element in the value. In fact, no one doubts that if, say, in a small town there were twelve licensed premises and six of these were suddenly suppressed the value of the other six would rise greatly.[1] It is fundamental in any scheme that this

[1] The policy of the London County Council at the present time (see the debate of 22nd January, 1901) is to buy up licensed premises in connection with public improvement and then to abandon the licences. The result is to improve, to some extent, the value of other licensed premises. What the publicans have done that they should deserve what is in effect a free gift from the ratepayers of London, is not very clear. In 1890 the temperance party expressed great indignation at a similar "endowment of public-houses" (though Mr. Goschen's scheme provided against the necessity of giving compensation for any such increase of value if such a public-house was bought out); in 1901 they appear to have accepted this endowment without protest. It would be interesting to discover the grounds for this change of view.

increased value should not be allowed to go to these licence-holders, but should be used in compensating the six persons who have lost their licence. The view is sometimes held,[1] that in such a case the value of the six left would be increased by the total value of the six suppressed, in which case full compensation could be paid without any individual being burdened, and the cause of temperance not very materially assisted. The more moderate view is to suppose that the six licensed houses left would be increased in value, but not to the full extent of the value of the licences and goodwill of the other houses. In this case we must look elsewhere for our funds for compensation, on the assumption that our compensation should be full.

[1] "The diminution in the number will not entail a corresponding diminution in the drink traffic. The business of the remaining houses will be increased, and will be enlarged to the full extent of the apparent numerical diminution of the houses" (Gladstone, 15th May, 1890, 344 Hansard, 997).

A REASON FOR NOT GIVING FULL COMPENSATION.

Before discussing the source of our funds, it remains to be considered whether any reasons exist why the compensation should not be full. It will be remembered that the market value test (of course the market value before the Act limiting the licences was passed) takes into account the uncertainties of the licence-holders' position, and therefore to make deductions from the compensation on the ground of this uncertainty would be to make double deduction for a single cause. The question is whether there are any circumstances, such as illegality or immorality, which would make it proper to reduce the compensation. This point is fairly raised by H. Sidgwick in the quotation above given from him (p. 19). Are the rights of licence-holders "exercised in the more moral but less profitable way?" Public-houses should exist for the purpose of getting drink, not for the purpose of getting drunk. A publican is not entitled to serve a drunken person with liquor; he may be convicted and his licence endangered

if he does so. If all the cases where publicans served drunken persons with liquor led to convictions, this would affect the value of the licences, but it is only too clear that this is not the case. A drunken person is a common object; the conviction of a publican for serving a drunken person is a rare event. To the extent, then, that the value of a licence is enhanced by the fact that the profits are made from drunkenness, it is not unreasonable to refuse to compensate. How much this part of the profit is, it is hard to say, and in the case of a well-conducted licensed house, it is so small that it may be neglected. But the very public-houses that it is most desirable to suppress are just those in which this part of the profit would be large. To make a fair allowance for this would be a most difficult task, but if possible it should be made.

In any case where it was proved that a drunken man had been served the licensee is certainly not entitled to much consideration, and it would be well that he should receive no compensation. But there are many cases where this cannot be proved, and yet

it is certain that persons at any rate on the verge of drunkenness have been served.

THE SOURCE FROM WHICH COMPENSATION SHOULD COME.

There remains the question: If the increment of value of the remaining licensed premises is not sufficient to compensate the persons whose licences have been suppressed at the market value (reduced by so much of it as is due to serving drink to those who are drunk or nearly so), where is the remainder of the money to come from? It is often said from the trade; that is, by the special taxation of those who make, sell, or consume alcoholic liquor. But this argues a very limited view of taxation for Imperial purposes. It is true that it is the fashion to allocate special portions of the Imperial Revenue for special purposes, or to say that certain grants are charged upon special parts of the Revenue, but there is no great sense in this. The fact is that a certain amount of money has to be raised by the Chancellor of the Exchequer in each year, and that it does not make much difference

whether we say that certain sums of money which are to be used for a special purpose come out of the death duties or the excise duties or income tax. At present the liquor trade has a grievance because the money derived from certain excise and customs duties which was to have gone under the scheme of 1890 to buy up licences has been used for technical education. It is a very technical grievance. And similarly it will not make much difference whether it is said that this money is raised by taxation of the trade by excise duties, licence duties, and the like, or whether it is said to come out of the general revenue of the country. Of course, if a heavy tax is suddenly put upon licences or licensed property this will at first fall on the owner of this property, but in the long run the consumer will bear most of it. Probably the excise and customs duties on alcohol cannot be very largely increased, without a danger of there being a falling off in the revenue derived from them.[1] And, in general, it seems more

[1] See Sir M. Hicks-Beach's Speech, *Times*, 19th April, 1901.

reasonable if the community at large wish to abolish a certain class of property that the community at large should pay for doing it. But to go into the intricacies of finance is outside the scope of this enquiry. Another source of compensation is time; the present value of a licence is high, its value in reversion thirty years off, though perceptible, is small. If the legislature enacted that at the end of thirty years all licences then existing should vest in local bodies, or philanthropic public companies, or the State, the amount of present injury to licence-holders would be comparatively small, and the gain to the State thirty years hence very great. Hence we see that most of the schemes of compensation provide for confiscation of a reversionary interest of larger or smaller value. To go further into detail is beyond the scope of this Essay, but it is important to bear this point (viz.: the low value of a reversionary compared to the high value of a present interest) in mind, as it often enables substantial justice to be done without taxing the Exchequer or preventing any other and more rapid reforms.

One point, however, should be made clear. There is all the difference between enacting that a man should have thirty years purchase of the annual value of his interest, and declaring that his interest shall last for thirty years and no more. Thus, on a 4 per cent. basis, an annuity of £100 for thirty years is worth £1,798, for forty years £2,058, and for fifty years £2,234. At 4 per cent., a capital sum of £2,500 gives an annual income of £100. Thus (if 4 per cent. is a fair basis for argument), if a man was deprived of a permanent income of £100, £2,500 would be full compensation. To declare that this income should cease after thirty years would be to deprive him of £702, or more than one-quarter of the value of his property. And a proposal that after fifty years a man should be deprived of this income would be to deprive him of one-tenth of his property. It will be seen, therefore, that even allowing for the uncertainty of a licence-holder's position and of the continuance of a profitable business, that a proposal that thirty years hence all licences should vest in public bodies without compen-

sation is one that involves a very considerable amount of confiscation, and that it is necessary to extend this period to forty or fifty years, if it is not wished to do serious damage to the persons at present interested in licensed property.

WHO SHOULD RECEIVE THE COMPENSATION?

When compensation is given for the loss of a licence, who should receive the compensation money? Much has been written on this topic, because in general there are many persons who are interested in the licence, but no valid ground can be given for refusing to apportion the money according to the legal rights of these different persons *inter se*. The case is the same as if the licence was taken under the Lands Clauses Consolidation Acts, except that the amount of compensation will be different. There is no reason why mortgagees of licensed premises should be treated differently from other mortgagees, and in any scheme proper provision should be made for them or they should be left to their rights under their mortgage deed.

CONCLUSION.

A few minor questions remain. Are we to compensate merely for the loss of the licence, or also for the other disturbance caused? The brewer's trade is diminished, the publican's and barman's occupation gone. How far the damage thus caused is too small or too remote to be considered depends so much upon the particular scheme that the question in an abstract form does not admit of a plain answer. When hours of opening are shortened, or when Sunday closing is enforced, it is not usual to propose compensation. There are reasons for this; the damage is in general small, and hard to estimate, and in some cases very remote. The business of a bar-tender or publican is not highly skilled, and he cannot be said to have invested any personal capital in acquiring the art or mystery of his trade, as might be said is the case of a clergyman, who, after an expensive education, was deprived of his living.

The only reasonable plan is to sketch or draft a Bill for the particular reform proposed. Difficulties in detail will then appear

and must be considered with the utmost care, and until this is done an abstract discussion of points of detail is beside the mark. General principles, with some of the more important applications, are the only topics that can usefully be discussed in the abstract. The concrete problem of producing a satisfactory detailed scheme is both more difficult and more important.

Before, however, any scheme has a reasonable chance of success it is imperative that the main features should be based upon equitable and reasonable principles, and such as would commend themselves to the judgment of ordinary men. The temperance question is a serious one, and has become an important factor in politics. Past experience shows that the question of compensation has often proved the rock upon which a scheme of temperance reform has been wrecked. So long as no agreement is arrived at, there is little hope of any comprehensive measure of reform being sanctioned by the legislature. The object of this Essay has been to investigate the question soberly and without prejudice. The author

cannot hope that his conclusions will be accepted by all his readers, but he trusts that his facts and arguments may prove of some assistance to those who are interested in Temperance Reform.

APPENDIX.

Acts under which compensation has been given to persons for their loss of office. On the question of compensation to officers a series of articles in *The Justice of the Peace* for 16th and 30th March and 13th April, 1901, should be consulted.

Date.	Title and section of Act.	Persons compensated.
1825.	An Act for preventing frivolous writs of error (6 Geo. IV. c. 96, s. 2).	Cursitors and other officers of the Courts of Law and Equity.
1830.	An Act for Regulating the Receipt and future Appropriation of Fees and Endowments receivable by Officers of the Superior Courts of Common Law (11 Geo. IV. & 1 Will. IV. c. 58, s. 16).	Persons holding any office in or belonging to any of the Superior Courts of Common Law.
1831.	An Act to explain and amend the same (1 & 2 Will. IV. c. 35, s. 4).	Ditto.
1831.	An Act to repeal so much of an Act for the Management of Customs as allows certain fees to be taken by the Officers of the Customs (1 & 2 Will. IV. c. 40).	Officers of the Customs.[1]
1835.	The Municipal Corporations Act, 1835 (5 & 6 Will. IV. c. 76, s. 66).	Officers of Boroughs or Counties.

[1] See *Tunstall* v. *Boothby*, 9 L. J. Ch. 294.

Date.	Title and section of Act.	Persons compensated.
1842.	An Act to confirm the Incorporation of certain Boroughs, and to indemnify such persons as have sustained loss thereby (5 & 6 Vict. c. 111).	Officers of Boroughs or Counties.
1844.	An Act to amend the law respecting the office of County Coroner (7 & 8 Vict. c. 92, s. 6).	County Coroners.
1867.	Metropolitan Poor Act, 1867 (30 & 31 Vict. c. 6, s. 76).	Officers acting under Local Acts for the Relief of the Poor.
1869.	Metropolitan Poor Amendment Act (32 & 33 Vict. c. 63).	Ditto.
1867.	Poor Law Amendment Act, 1867 (30 & 31 Vict. c. 106, s. 20).	Officers of dissolved Unions.
1868.	Poor Law Amendment Act, 1868 (31 & 32 Vict. c. 122, s. 15).	Ditto.
1870.	Dissolved Boards of Management and Guardians Act, 1870 (33 & 34 Vict. c. 2).	Ditto.
1875.	Public Health Act, 1875 (38 & 39 Vict. c. 55, s. 309).	Officers of bodies of persons entrusted with the execution of Acts relating to the Public Health.
1888.	Local Government Act, 1888 (51 & 52 Vict. c. 41, s. 120).	Officers of authorities whose powers were transferred to County Councils.
1894.	Local Government Act, 1894 (56 & 57 Vict. c. 73, s. 81).	Officers of authorities whose powers were transferred to Parish and District Councils.
1899.	London Government Act, 1899 (62 & 63 Vict. c. 14, s. 30).	Assistant overseers, rate collectors and other officers.

NOTE ON THE BIBLIOGRAPHY OF THE SUBJECT.

The literature of Temperance Reform is very large. The first five editions of Rowntree and Sherwell's "The Temperance Problem and Social Reform" contained Bibliographies of "Prohibition" and "Scandinavian Methods," which include some works of a more general character. A general Bibliography by Mr. Sherwell is to be found at the British Library of Political Science.

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THE END.

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